



**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB DOCKET NO. MC-F-21047 0**

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**REQUEST FOR DELAY  
BY VENTURA COUNTY TRANSPORTATION COMMISSION**

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**ENTERED  
Office of Proceedings**

**JUN 19 2012**

**Part of  
Public Record**

Mitchel B. Kahn, General Counsel  
NELSON COMIS KAHN & SEPULVEDA LLP  
300 Esplanade Drive, Suite 1170  
Oxnard, California 93036  
(805) 604-4100

Attorneys for Ventura County  
Transportation Commission

Date: June 18, 2012

**ORIGINAL**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**REQUEST FOR DELAY  
BY VENTURA COUNTY TRANSPORTATION COMMISSION**

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The Ventura County Transportation Commission ("VCTC") is a public agency established by the Public Utilities Code of the State of California at section 130050.1. VCTC operates a regional bus system with connections to municipal and local transit operators, including connections into the Counties of Los Angeles and Santa Barbara. The VCTC regional bus system is called "VISTA".

The VISTA system served approximately 860,000 riders in 2011, including school children in some areas; employees traveling between Ventura and Santa Barbara Counties, as well as between cities within Ventura County; and the elderly and others otherwise unable to have access to doctors, grocery stores and a variety of other locations.

For several years, VCTC has contracted with Coach America, Inc., through its CUSA CC, LLC subsidiary doing business as Coach America Los Angeles. Attached hereto as Exhibits 1, 2 and 3 is the VCTC staff report and the executed restated and amended agreements approved by VCTC at its June 5, 2009 regular meeting. The first agreement is for the lease of buses and miscellaneous equipment for the operation of VISTA fixed route transit service through June 30, 2012. The second agreement is for the

operation of the VISTA fixed route transit service also expiring on June 30, 2012. However, section 19.B of the lease agreement and section 18.B of the operating agreement both contain identical options to extend the agreements to June 30, 2015, exercised by VCTC providing at least 60 days notice to CUSA CC, LLC. The only matters left for a future negotiation and agreement are the costs of those extensions, which costs increase parameters are clearly spelled out in both agreements. The last sentence of both option provisions state, "Such option may be exercised by amendment hereto or by issuance of a new agreement signed by the parties hereto." VCTC exercised the options to extend the agreements at its regular meeting of November 5, 2010 (Exhibit 4 hereto) and notice was provided as required by those option sections when the written extension agreements were personally handed to Darlene Cochran, the person who signed both of the 2009 agreements. The extension agreements were not returned to VCTC by CUSA CC, LLC.

Therefore, it is the position of VCTC that the agreements entered into in 2009 were extended through June 30, 2015 on the same terms and conditions. Otherwise, CUSA CC, LLC would essentially have been granted a veto power over the exercise of the VCTC options, rendering those options illusory.

Both the lease and operating agreements contain identical language with regard to terminations. At section 43.A.6 of the lease and section 34.A.6 of the operating agreement, CUSA CC, LLC must provide at least 90 days' written notice before terminating the agreements. Obviously, that is by design to allow VCTC to find and hire a replacement operator and equipment to continue servicing the public need without a break in service. That brings us to the point of this filing.

When the bankruptcy of Coach America and its affiliates was proceeding toward a conclusion in April through May of 2012, VCTC personnel and I, as VCTC General Counsel, had conversations with CUSA CC, LLC personnel and, in my case, an outside attorney who has represented CUSA CC, LLC for an extended period. The information we received and relied upon was that there would be no changes in the operations or local management of the VISTA system as a result of the bankruptcy.

Contrary to that information, and contrary to the contract requirements, by a letter dated June 12, 2012, CUSA CC, LLC communicated to VCTC that it would terminate the VISTA service on June 30, 2012. (See Exhibit 5 hereto.) Further communications by the VCTC Executive Director with individuals at CUSA CC, LLC, and TMS led to a possibility, but no promises, that service could continue through the end of July, 2012. Even in that case, notice to terminate the agreements violates the CUSA CC, LLC lease and operating agreements and provides VCTC riders no assurance of continued and seamless transit service which is so very critical to them.

In other words, the faster your Board acts to approve the proposed transactions, the faster VCTC service is jeopardized unless, pursuant to your Board's authority contained in 49 U.S.C. § 14303, subd. (b), your Board imposes such conditions as may be required to allow VCTC adequate time to find a new contractor to provide this essential service to our community.

We understand that this is basically a contract dispute between the current operator and VCTC. However, once your Board acts on the filing to allow the acquisitions as planned, with operations going to one company and the equipment and buses going elsewhere, CUSA CC, LLC will cease to exist and there will be no entity to

charge with a breach of contract unless your Board delays your action or conditions the new entities to legally step into the shoes of CUSA CC, LLC, for the period of time equal to the extensions, until June 30, 2015, to provide VCTC the ability to locate and hire a new operator at a reasonable cost and with sufficient equipment meeting California and ADA standards.

VCTC requests notice of any public hearing on this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mitchel B. Kahn", written over a horizontal line.

Mitchel B. Kahn, General Counsel  
NELSON COMIS KAHN & SEPULVEDA LLP  
300 Esplanade Drive, Suite 1170  
Oxnard, California 93036  
(805) 604-4100

Attorneys for Ventura County  
Transportation Commission

Date: June 18, 2012

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 18<sup>th</sup> day of June, 2012 served a copy of the foregoing Request for Delay on all parties of record by first class mail, postage prepaid.

Mitchel B. Kahn  
Mitchel B. Kahn

**SERVICE LIST**

David H. Coburn  
Steptoe & Johnson LLP  
1330 Connecticut Ave., NW  
Washington, DC 20036

Michael Yusim  
7499 Eagle Point Drive  
Delray Beach, FL 33446



**Item # 10K**

**June 5, 2009**

**MEMO TO: VENTURA COUNTY TRANSPORTATION COMMISSION**  
**FROM: VIC KAMHI, DIRECTOR OF BUS TRANSIT, ED WEBSTER, VISTA MANAGER**  
**SUBJECT: VISTA CAPITAL AND OPERATING AGREEMENTS WITH COACH USA**

**RECOMMENDATION:**

- Approve attached agreements with Coach USA
- Approve use of \$400,000 in American Recovery & Reinvestment Act (ARRA), Phase II Transit Funds to purchase particulate traps for VISTA Fleet

**DISCUSSION:**

VCTC is currently entering the third year of five year agreements with Coach America for VISTA fixed route bus services.

The attached agreements with Coach America represent a continuation of the current VISTA services under a revised contract. (The modifications allow the flexibility for the VCTC Executive Director to revise service hours within the parameters of the VCTC VISTA budget allocations. This will allow VCTC staff to make schedule changes and minor service adjustments without having to amend the agreements.)

In addition, as part of the VCTC January 2009 agreement with the California Air Resources Board (CARB), the VCTC agreed to bring the VISTA fleet into compliance with the California Bus Rule, which requires the placement of particulate traps on VISTA buses. The cost is \$400,000, which will allow VCTC to purchase 25 particulate traps, including the "mapping" to insure that the configuration is correct for the VISTA fleet of buses. CARB certified the traps being provided (the only ones certified for the VISTA buses) in March, 2009. Coach USA will be responsible for the installation of the devices.

This will allow VCTC to retrofit the existing VISTA fleet, and acquire one additional particulate trap for expansion planned this year. The buses, so equipped, will bring VISTA into compliance with the CARB regulations through 2020. (VISTA currently meets the NOx standard required by CARB.)

As part of the agreement VCTC requires Coach USA to uninstall or purchase from VCTC the devices if the buses are no longer used by VCTC/VISTA within the "useable life" of the particulate traps, in compliance with Federal Transit Administration regulations and state laws dealing with public property. Once VCTC has approved the funding, and FTA has authorized the expenditure, staff will move expeditiously with Coach to acquire and install the devices, and provide the documentation to CARB.

**Attachments:**

**The attachments to this agenda item appear at the end of today's VCTC agenda.**

1. Amended and Restated Agreement FY 2009-10, FY 2010-11, FY 2011-12 for lease of fully maintained buses and miscellaneous equipment associated with VISTA Highway 101, VISTA Highway 126, VISTA East County, VISTA Conejo Connection, VISTA CSUCI, VISTA Coastal Express routes



2. Amended and Restated Agreement FY 2009-10, FY 2010-11, FY 2011-12 for operating services associated with VISTA Highway 101, VISTA Highway 126, VISTA East County, VISTA Conejo Connection, VISTA CSUCI, VISTA Coastal Express routes
3. Cost estimate documentation for CARB certified particulate traps

**AMENDED AND RESTATED AGREEMENT  
FY 2009-10, FY 2010-11, FY 2011-12**

**FOR LEASE OF FULLY MAINTAINED BUSES AND MISCELLANEOUS EQUIPMENT  
ASSOCIATED WITH  
VISTA HIGHWAY 101, VISTA HIGHWAY 126, VISTA EAST COUNTY, VISTA  
CONEJO CONNECTION, VISTA CSUCI, VISTA COASTAL EXPRESS ROUTES**

This is an amended and restated agreement ("Agreement") by and between Ventura County Transportation Commission (VCTC), hereinafter also referred to as "COMMISSION," and CUSA CC, LLC dba Coach America Los Angeles, a Delaware Corporation, hereinafter referred to as "CONTRACTOR".

**RECITALS**

**WHEREAS**, the Ventura County Transportation Commission ("COMMISSION") has contracted with CUSA CC, LLC, dba Coach America, Los Angeles ("CONTRACTOR") to provide fixed route transit service; and

**WHEREAS**, COMMISSION and CONTRACTOR are in the second year of a five year agreement to provide this service; and

**WHEREAS**, COMMISSION wishes for CONTRACTOR to continue to provide this service for the remainder of the original contract term; and

**WHEREAS**, COMMISSION adopts an annual budget for VISTA fixed route services, which provides a maximum amount to be paid for lease and operation of VISTA buses; and

**WHEREAS**, COMMISSION intends for its Executive Director to have the discretion to implement changes to the VISTA schedules and service within the parameters of that budget; and

**WHEREAS**, COMMISSION wishes to replace the "Agreement FY 2007-08, FY 2008-09, FY 2009-10, FY 2010-11, FY 2011-12 FOR LEASE OF FULLY MAINTAINED BUSES AND MISCELLANEOUS EQUIPMENT ASSOCIATED WITH VISTA HIGHWAY 101, VISTA HIGHWAY 126, VISTA EAST COUNTY, VISTA CONEJO CONNECTION, VISTA CSUCI, VISTA COASTAL EXPRESS ROUTES" with a new agreement which accomplishes the above purpose; and

**WHEREAS**, CONTRACTOR agrees to these contract modifications;

**NOW, THEREFORE**, COMMISSION and CONTRACTOR hereby agree as follows:

**1. STATEMENT OF AGREEMENT**

Effective on July 1, 2009 this Agreement supersedes the previous agreement of the above parties entitled, "Agreement FY 2007-08, FY 2008-09, FY 2009-10, FY 2010-11,

**EXHIBIT 2**

FY 2011-12 FOR LEASE OF FULLY MAINTAINED BUSES AND MISCELLANEOUS EQUIPMENT ASSOCIATED WITH VISTA HIGHWAY 101, VISTA HIGHWAY 126, VISTA EAST COUNTY, VISTA CONEJO CONNECTION, VISTA CSUCI, VISTA COASTAL EXPRESS ROUTES."

COMMISSION hereby engages CONTRACTOR, and CONTRACTOR hereby accepts such engagement, to perform the services on the terms and conditions herein described and for the compensation herein provided, all as set forth in this Agreement. CONTRACTOR hereby warrants that it has the qualifications, experience and facilities to properly perform said services and hereby agrees to undertake and complete the performance thereof for the professional services as an independent contractor, and it does not render CONTRACTOR as employee of the COMMISSION for any purpose whatsoever. CONTRACTOR shall at all times retain the status of independent contractor.

## **2. DESCRIPTION OF SERVICES**

The services to be performed by CONTRACTOR are those set forth in the Scope of Work of this Agreement set forth in Attachment #1. Subject to the annual budgets adopted by the COMMISSION during the term of this Agreement, Attachment #1 may be modified by mutual written agreement of the Executive Director of the COMMISSION and the General Manager of CONTRACTOR. By reference, the services as outlined in the associated Request for Proposals and CONTRACTOR's proposal to provide this service are also made a part of this Agreement.

## **3. CHANGES IN THE WORK**

It shall be understood and agreed by the CONTRACTOR that COMMISSION, and to the extent authorized hereby, the Executive Director of the COMMISSION, may, at any time during the progress of this project, increase, decrease, or modify the transportation services to be performed by the CONTRACTOR. Any such change shall not invalidate this Agreement, and the CONTRACTOR shall agree to provide the fully maintained capital equipment.

## **4. COMPENSATION**

The total compensation payable to CONTRACTOR, by COMMISSION, for providing the fully maintained vehicles is not to exceed the sums listed in Attachment #2 for each year of service. Subject to the annual budgets adopted by the COMMISSION during the term of this Agreement, Attachment #2 may be modified by mutual written agreement of the Executive Director of the COMMISSION and the General Manager of CONTRACTOR.

The COMMISSION shall not be obligated to pay CONTRACTOR for costs incurred in excess of the amounts shown in Attachment #2, as it may be modified from time to time as provided by this Section 4. COMMISSION will pay CONTRACTOR at the hourly rates listed on Attachment #2 as it may be modified from time to time, for the service actually provided, and identified in the Scope of Work. CONTRACTOR is not obligated to provide service beyond that stated in the contract compensation amount.

## **5. PROGRESS AND COMPLETION**

CONTRACTOR shall provide the fully maintained vehicles upon written authorization of the COMMISSION to proceed.

## **6. ASSIGNMENT AND SUBCONTRACTING**

This Agreement is for the provision and maintenance of specified vehicles and CONTRACTOR may not assign or subcontract its rights under this Agreement nor delegate the performance of its duties without the COMMISSION's prior written consent. CONTRACTOR, its assigns and subcontractors shall complete all obligations under this Agreement and as set forth in Scope of Work. Any subcontract, assignment or delegation without COMMISSION's prior written consent shall be void.

## **7. RELATIONSHIP OF THE PARTIES**

Both parties to this Agreement agree that the relationship of the parties shall be that CONTRACTOR is an independent contractor and shall represent the will of COMMISSION only as the result of the subject matter of this Agreement, and not as the manner in which the services herein are performed, except as provided in Scope of Work set forth in Attachment #1. CONTRACTOR shall have complete control and responsibility over the details and performance of the services herein required to complete this Agreement, and in no event shall CONTRACTOR be considered an officer, agent, servant or employee of COMMISSION.

## **8. INSURANCE**

### **A. LIABILITY INSURANCE**

CONTRACTOR shall, at its own cost and expense, procure and maintain during the term of this Agreement liability insurance coverage of the following types and written on an "occurrence" form, and with not less than the following limits of liability:

**GENERAL PUBLIC LIABILITY AND PROPERTY DAMAGE - \$10 million per Occurrence**

This coverage shall include, but not be limited to:

- 1) Operations – Premises Liability;
- 2) Independent Contractors Liability – Broad Form;
- 3) Contractual Liability covering the CONTRACTOR's obligations herein;
- 4) Personal Injury Liability extending to claims arising from employees of the CONTRACTOR;
- 5) Completed Operations and Products Liability.

**AUTOMOBILE LIABILITY INSURANCE FOR PROPERTY AND LIABILITY COVERAGE FOR OWNED AND NON-OWNER HIRED AUTOMOBILES - \$10 million per Occurrence**

No later than 10 working days prior to the commencement of work, CONTRACTOR shall furnish COMMISSION with a Certificate of Insurance evidencing the above coverage requirements.

**THE CERTIFICATE SHALL ALSO CONTAIN THE FOLLOWING LANGUAGE:**

- 1) "The Agencies as specified by the VISTA Agreements including the Ventura County Transportation Commission, the City of Camarillo, the City of Fillmore, the City of Moorpark, the City of Oxnard, the City of San Buenaventura, the City of Santa Paula, the City of Simi Valley, the City of Thousand Oaks, the City of Carpinteria, the City of Santa Barbara, the City of Goleta, the County of Santa Barbara, the Santa Barbara County Air Pollution Control District, the Santa Barbara County Association of Governments; the State of California, the Trustees of California State University and the employees, officers and agents of each of them; and the County of Ventura are additional insured."
- 2) "The liability assumed by CONTRACTOR under the provisions of the Hold Harmless and Indemnity clause contained in the Agreement is covered by the terms of this policy."
- 3) "The policy will not be canceled or materially changed without thirty (30) days prior written notice to COMMISSION."

**B. WORKERS COMPENSATION INSURANCE**

As required by Section 1860 of the California Labor Code (Chapter 1000, Statutes of 1965), the CONTRACTOR shall secure the payment of Worker's Compensation to its employees in accordance with the provisions of Section 3700 of the California Labor code and shall furnish COMMISSION with certificate evidencing such coverage.

**9. CONTRACT BONDS**

Prior to the effective date of this Agreement, the CONTRACTOR shall file with the VCTC surety bonds or a Letter of Credit in the amounts and for purposes noted below. Bonds shall be duly executed by an admitted surety insurer in the State of California. The CONTRACTOR shall pay all bond premiums, costs, and incidentals.

Each bond shall incorporate, by reference, this Agreement and be signed by both the CONTRACTOR and surety provider, and the signature of the authorized agent of the surety shall be notarized.

The CONTRACTOR shall provide two good sufficient surety bonds. The "Payment Bond" (Material and Labor Bond) shall be for not less than 50 percent of the highest annual contract price, to satisfy claims of material suppliers and of mechanics and laborers employed by it on the Contract. The bond shall be maintained by the CONTRACTOR in full force and effect as defined below, and until all claims for materials and labor are paid, and shall otherwise comply with the Civil Code.

The "Performance Bond" shall be for 25 percent of the highest annual contract price to guarantee faithful performance of all work, within the time prescribed, in a manner satisfactory to VCTC.

Should any bond become insufficient, the CONTRACTOR shall renew the bond within 10 days after receiving notice from VCTC.

Should any surety at any time be unsatisfactory to the VCTC, notice will be given the CONTRACTOR to that effect. No further payments shall be deemed due or will be made under this Agreement until a new surety shall qualify and be accepted by VCTC.

Changes in this Agreement, or extensions of time, made pursuant to this Agreement, shall in no way release the CONTRACTOR or surety from their obligations. Notice of such changes or extensions shall be waived by the surety.

The bond shall be accompanied by the documents required by Code of Civil Procedure Section 995.660 which are:

- A) The original, or a certified copy, of the un-revoked appointment, power of attorney, bylaws, or other instrument entitling or authorizing the person who executed the bond to do so.
- B) A certified copy of the certificate of authority of the insurer issued by the Insurance Commissioner of the State of California.
- C) A certificate from the County Clerk of the applicable County that the certificate of authority of the insurer has not been surrendered, revoked, canceled, annulled, or suspended or, in the event that it has, that renewed authority has been granted.
- D) A financial statement of the assets and liabilities of the insurer at the end of the quarter calendar year prior to 30 days next preceding the date of the execution of the bond. The financial statement shall be made by an officer's certificate as defined in Section 173 of the Corporations Code. In the case of a foreign insurer, the financial statement may, instead of an officer's certificate, be verified by the oath of the principal officer or manager residing within the United States.

The material and labor bond must remain in effect until the expiration of six months after the period in which verified claims may be filed as provided in Section 1192.1 of the Code of Civil Procedure, and the performance bond must be paid up and in effect for 3 months after the end of this Agreement.

#### **10. INDEMNIFICATION**

CONTRACTOR shall defend, indemnify and hold harmless the Ventura County Transportation Commission, the County of Ventura, the City of Camarillo, the City of Fillmore, the City of Moorpark, the City of Oxnard, the City of San Buenaventura, the City of Santa Paula, the City of Simi Valley, the City of Thousand Oaks, the City of Carpinteria, the City of Santa Barbara, the City of Goleta, the County of Santa Barbara, the Santa Barbara County Air Pollution Control District, the Santa Barbara County Association of Governments, the State of California, the Trustees of California State University and the employees, officers and agents of each of them (the "VCTC Group") from all liability costs, damages, or expenses, including attorneys' fees arising out of or incurred in connection with the CONTRACTOR'S, and its employees', agents', and subcontractors' acts or omissions in the performance of the services provided pursuant to this Agreement, and agrees at its own cost, expense and risk to defend any and all resulting actions, suits, or other legal proceedings brought or instituted against the VCTC Group arising out of its performance of this Agreement, and to pay and satisfy any resulting judgments, claims, damages and costs.

The CONTRACTOR agrees to defend and pay the entire cost of defending any claim or suit whenever or wherever made or brought against the VCTC Group based upon an infringement or alleged infringement of such letters patent, and to indemnify and save harmless the VCTC Group from and against any and all liability, damage, loss or injury adjudged or sustained in any such claim or suit, or adjudged or sustained by reason of the equipment to be furnished hereunder constituting an infringement of any letters patent or adjudged or sustained by reason of inability of the VCTC Group to use said equipment because of any infringement or alleged infringement of any letters patent.

**11. PRODUCTS**

Any products, including route maps and timetables, prepared by CONTRACTOR as described in the Scope of Work become the sole property of the COMMISSION upon completion of this Agreement and full payment for services.

**12. ATTORNEY'S FEES**

In the event an action is filed by either party to enforce rights under this Agreement, the prevailing party shall be entitled to recover a reasonable attorney's fee in addition to any other relief granted by the court.

**13. NOTICES**

**A. TO THE COMMISSION**

All notices to the COMMISSION under this Agreement shall be in writing and sent to:

Darren M. Kettle,  
Executive Director  
Ventura County Transportation Commission  
950 County Square Drive, Suite 207, Ventura, CA 93003

**B. TO THE CONTRACTOR**

All notices to CONTRACTOR under this Agreement shall be in writing and sent to:

Ms. Darlene Cochran,  
Vice President and General Manager  
CUSA CC, LLC  
3333 E. 69<sup>th</sup> Street, Long Beach, CA 90805

**14. ENTIRE AGREEMENT, MODIFICATION, AND EFFECTIVE DATE**

**A. ENTIRE AGREEMENT**

This Agreement, together with the "AMENDED AND RESTATED AGREEMENT FY 2009-10, FY 2010-11, FY 2011-12 FOR OPERATING SERVICES ASSOCIATED WITH VISTA TRANSIT SERVICE VISTA HIGHWAY 101, VISTA HIGHWAY 126, VISTA EAST COUNTY, VISTA CONEJO CONNECTION, VISTA CSUCI, VISTA COASTAL

EXPRESS ROUTES," constitute the entire Agreements between the parties and supersede all agreements and understandings related to this work. Each party to this Agreement acknowledges that no representation, inducements, promises or agreements, orally or otherwise have been made by a party, or anyone acting on behalf of any party, which are not embodied herein or in the above-cited agreements, and that any other agreement, statement or promises not contained in these Agreements shall not be valid or binding.

## **B. MODIFICATIONS**

This Agreement may not be altered, amended, or modified except by written instrument signed by the duly authorized representative of both parties.

## **C. EFFECTIVE DATE**

This Agreement shall be effective as of the issuance of a Notice to Proceed from the COMMISSION to CONTRACTOR.

## **15. GOVERNING LAW**

This Agreement shall be governed by and in accordance with the laws of the State of California and the United States of America.

## **16. SERVICES TO BE PERFORMED**

The services to be performed by the CONTRACTOR pursuant to this Agreement include: (1) the actual operation (including the provision of equipment as specified in this Agreement); and (2) submission of reports and other materials to COMMISSION as specified.

## **17. MAINTENANCE OF EQUIPMENT**

COMMISSION will not provide vehicles to the CONTRACTOR. The CONTRACTOR shall provide the equipment as specified in this Agreement. The CONTRACTOR shall be responsible for maintenance of vehicles and spares used in providing the services, and also, maintenance of other relevant equipment (e.g. fare collection equipment, wheelchair lifts, air conditioning systems) to provide safe and proper working conditions, free from damage and malfunction.

## **18. DESCRIPTION OF TRANSIT SERVICES**

### **A. ROUTE**

This Agreement is for the services described in Attachment #1, commencing on Wednesday, July 1, 2009.

### **B. DAYS/HOURS OF OPERATION**

VISTA Coastal Express and 126 Route shall operate all seven days of the week. Conejo Connection service shall be provided Monday through Friday (no weekend service). All other VISTA services shall operate Monday through Saturday (no Sunday service). No



service is provided on any of the routes on the official holidays of New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. Details about the services are included in Attachment #1.

COMMISSION reserves the right to make adjustments to the service hours and service areas pursuant to the terms of Section 2, above.

For major adjustments, CONTRACTOR will be notified not less than seven (7) calendar days prior to the effective date; for minor adjustments, CONTRACTOR will be given at least 24 hours notice.

#### **C. SERVICE DESCRIPTION**

Details about the service are included in Attachment #1, as it may be modified from time to time pursuant to the terms of Section 2, above.

### **19. PERIOD OF CONTRACT**

#### **A. PERIOD AND RATE CONSIDERATIONS**

All services provided by this Agreement shall commence on Wednesday, July 1, 2009 and terminate upon completion of daily service on June 30, 2012. For the second and third years of this Agreement, the COMMISSION may allow an increase in rates based on increased cost of labor, fuel, fuel oil or petroleum products, and/or because of unanticipated regulatory, license, tax or other costs implemented by government agencies. Also, any significant changes in the schedule or route resulting in a major change in the operating hours will be considered.

Any increase in labor costs must be substantiated by the CONTRACTOR. Any increase based on the increases in labor, fuel, oil or other petroleum products must be substantiated by valid purchase orders or other such contracts verifying that such increase is actual, unavoidable and beyond the control of the CONTRACTOR.

The CONTRACTOR shall agree, upon request of the COMMISSION, to submit detailed cost breakdowns in order to permit verification of the request. This request for an increase in proposed fees for the coming fiscal year shall be made no less than ninety (90) days prior to end of the preceding fiscal year.

#### **B. OPTION TERM**

Subject to authorization from FTA, the COMMISSION may extend any of the services provided by the CONTRACTOR under this Agreement through June 30, 2015. Costs associated with such an extension shall be established by mutual agreement of the parties, based on the following principles:

Such extension shall be at the same rates, terms and conditions as the original term of this Agreement. Any increase in cost shall be no more than the current cost of living increase as determined by the State of California for the Ventura County/Santa Barbara County areas, except that the COMMISSION may allow an increase in rates based on increased costs of labor, fuel, oil, or other petroleum products. Any increase in labor costs must be substantiated by a valid contract between the CONTRACTOR and its

employees and/or union organization representing CONTRACTOR'S employees. Any increase based on increases in labor, fuel, oil or other petroleum products must be substantiated by valid purchase orders or other such contracts verifying that such increase is actual, unavoidable and beyond the control of the CONTRACTOR.

The CONTRACTOR shall agree, upon request of the COMMISSION to submit detailed cost breakdowns, for the option period(s) in order to permit verification of this request. This request for an increase in proposed fees shall be made no less than forty-five days prior to expiration of this Agreement.

If wishing to exercise this option, COMMISSION shall serve notice to the CONTRACTOR at least sixty (60) days prior to expiration of this Agreement of its wish to extend. Such notice shall not be deemed to commit COMMISSION to such extension.

It is mutually understood and agreed that all work performed and services provided under any exercised option shall be in strict compliance with all requirements of this Agreement.

Additionally, it is mutually understood and agreed that: (1) COMMISSION is under no obligation to exercise this option; (2) no representation has been made by COMMISSION committing it to exercise this option; and (3) COMMISSION may secure services elsewhere. Such option may be exercised by amendment hereto or by issuance of a new agreement signed by the parties hereto.

## **20. CONTRACTOR PROJECT RESPONSIBILITIES**

### **A. VEHICLES/BACK-UP VEHICLES**

#### **1. Vehicle Standards**

CONTRACTOR will operate the necessary number of vehicles to satisfy the Scope of Work as described in Attachment #1. All primary vehicles must be painted according to COMMISSION specifications, be air conditioned, and have large tinted windshield and passenger windows. All vehicles shall be constructed in a manner sufficient to provide reliable and mechanically sound operation in the context of daily public transportation use.

Each vehicle shall be equipped with a wheelchair lift or ramp (hydraulic, electric, or mechanical) having documented reliability in public transit usage to accommodate the 95<sup>th</sup> percentile of wheelchair users, and two wheelchair stations. The wheelchair stations provided in each vehicle shall be equipped with securement devices (e.g., clamps and tie-downs) which meet standards established by the California Department of Transportation. The vehicles must also meet the criteria established in the Americans with Disabilities Act (ADA), Section 49 CFR Part 38, Accessibility Specifications for Transportation Vehicles.

All vehicles used in the operation of transit services shall be equipped with two-way radios which permit communication with the CONTRACTOR's dispatcher. Due to the regular transfer connections between the Hwy126 bus and the Santa Paula and Fillmore DAR services, an inter-communication system must also be provided between those services.

All vehicles shall have destination signs. Destination signs must be at the front and curbside of bus. The curbside destination sign must have the same destination data as displayed in the front head sign, and be placed in the window nearest the front door. The destination signs are to indicate the direction and destination toward which the vehicle is headed.

All graphics will be designed and approved by COMMISSION, and must meet the requirements of the ADA as specified in the ADA Section 49 CFR, Part 38. The vehicles shall display the official VISTA logo as provided by COMMISSION. Additional signage shall include vehicle numbers and a California transportation carrier identification number at the front and curb sides of the vehicle. All vehicle signage shall be approved by COMMISSION.

Each vehicle must be equipped with a farebox that is safe and secure, and that can accept dollar bills as well as coins. The bus operator must have either a mechanical or hand tabulated device to verify the fares collected by geographic area, by category of fare for cash and pre-paid fares, and by total passenger boardings.

If other than new vehicles are proposed, a statement of Condition for each coach in such condition shall be submitted to the COMMISSION. At a minimum, this Statement shall include the following: manufacturer and model; year of manufacture; odometer readings; tire condition, e.g., new, used, or recapped; miles and hours since last overhaul of engine and transmission. Interiors of any used vehicle proposed by the CONTRACTOR shall be in good condition, with all seats clean and free from tears and markings. All other interior surfaces likewise shall be clean.

Vehicles shall be certified on a random basis annually by inspection by the California Highway Patrol (CHP) in accordance with accepted CHP practice.

The CONTRACTOR shall not place any advertising on or in the vehicles unless written authorization is obtained from COMMISSION. The terms and conditions of such advertising shall be subject to COMMISSION approval, with all COMMISSION decisions being final. Upon the written request of COMMISSION, the CONTRACTOR shall make available space for such advertising on the exterior and/or interior of vehicles as COMMISSION may require.

The CONTRACTOR shall ensure that vehicles are equipped with a holder for transit schedules in a location easily accessible to passengers. CONTRACTOR shall also post a VISTA fare card in a conspicuous place in the driver/boarding area.

All vehicles proposed by the CONTRACTOR for use in operation of the subject service shall be available for inspection by COMMISSION and the CHP upon request. At the time of inspection, vehicles shall be equipped with all items required herein.

All vehicles proposed for use in the service by the CONTRACTOR shall be subject to final approval by the COMMISSION Executive Director.

Upon receipt of a notice to proceed, the CONTRACTOR will acquire and install up to 25 particulate traps certified by the California Air Resources Board (CARB). COMMISSION will provide reimbursement, up to a maximum of \$400,000, for the cost

of the particulate trap purchase and design (mapping), and the CONTRACTOR will pay for the installation of the particulate traps. The CONTRACTOR also agrees to uninstall the traps and return them to COMMISSION or purchase the devices from COMMISSION, at the agreed depreciated value, if the buses are no longer used by COMMISSION /VISTA within the "useable life" of the particulate traps, in compliance with Federal Transit Administration regulations and state laws dealing with public property.

## **2. Back-up Vehicles**

The CONTRACTOR shall at all times have vehicles available for use as back-up in the event that one of the primary vehicles is unable to operate. Whenever a primary vehicle is disabled, the CONTRACTOR shall dispatch the back-up into service within twenty (20) minutes of the time when the disability first occurs. The CONTRACTOR shall notify COMMISSION within thirty (30) minutes of the deployment of any back-up vehicle. The CONTRACTOR shall take necessary steps to minimize the use of back-up vehicles by effecting repairs to the primary vehicles as quickly as possible.

The required back-up vehicle must meet the same equipment specifications as outlined in the RFP, and must be clearly identified as operating the VISTA services.

The CONTRACTOR shall identify the vehicles proposed for back-up duty. Such vehicles shall be subject to approval by the VCTC Executive Director.

## **3. Vehicle Maintenance**

It shall be agreed by the CONTRACTOR that a regularly scheduled program of preventive maintenance is essential to ensuring sound and cost-effective vehicle operation. To document this, COMMISSION shall require the submission of a written Maintenance Plan as part of this Agreement, with the Plan containing a detailed description of the preventive maintenance program to be used by the CONTRACTOR for all vehicles involved in the provision of these services.

The vehicle maintenance plan should include the number and skill level of maintenance employees, preventive maintenance programs, vehicle defect identification and repair processes, and vehicle cleaning schedules.

Throughout the life of this Agreement, the CONTRACTOR shall, at all times and at its sole expense, cause all components of each vehicle to be maintained in safe and proper working condition, free from damage or malfunction. At its expense, the CONTRACTOR shall cause any vehicle damaged by accident or otherwise to be repaired as expeditiously as possible.

Any vehicle which sustains damage or experiences failures impairing safe mechanical operation shall be removed from service immediately, and shall not be reassigned until restored to safe operating condition.

The CONTRACTOR shall, at its expense, maintain stock of/and provide: fuel, lubricants, repair parts, and all other materials required for the maintenance and operation of its vehicles.

The CONTRACTOR shall be responsible for arranging annual terminal inspections by the CHP, and shall also maintain a satisfactory CHP rating throughout the life of this Agreement. Copies of all CHP inspection documents shall be promptly transmitted to COMMISSION within five (5) days of such inspection.

The CONTRACTOR shall maintain each vehicle in a clean condition throughout, both interior and exterior, at all times the vehicle is used in service under this Agreement. The exterior of each vehicle shall be washed at a minimum of every two days throughout the week. Additionally, prior to the commencement of each service day, vehicle interior shall be swept and vacuumed, and all windows shall be cleaned. The CONTRACTOR shall ensure that vehicles are free from insects and noxious odors.

The CONTRACTOR shall inspect the cleanliness of each vehicle prior to its assignment for service and ensure that the wheelchair lift is operational, prior to its assignment for service. Vehicles which fail to meet these standards shall be corrected prior to their assignment for service.

The CONTRACTOR shall cooperate in the Smartcard fare card program, including making the Smartcard equipment (on-bus, garage, and sales outlet) accessible to the Smartcard contractor for repairs, upgrades, data extraction, etc., as necessary. The CONTRACTOR shall conduct diagnostic checks of the driver and passenger units as required, and, when appropriate, shall replace the driver and/or passenger units with a spare unit provided by the Smartcard contractor. The CONTRACTOR shall be responsible for the safe-keeping of all Smartcard equipment on its vehicles. The CONTRACTOR shall ensure that the Smartcard data is downloaded from the vehicles on a daily basis.

## **B. RECORD KEEPING AND REPORTING**

### **1. Financial Records/Audits/Inspection**

The CONTRACTOR shall establish and maintain within a separate account all project expenditures and any other relevant financial records or documents. The CONTRACTOR shall submit invoices to the Ventura County Transportation Commission (the Agency responsible for administration of the VISTA operations) within five working days after the end of each month for services rendered during the reporting period. Invoices shall be prepared in such a form and supported by such documentation as may be required by COMMISSION to establish that the amounts are allowable. Payment to CONTRACTOR shall be made within thirty (30) days after receipt of an acceptable invoice. All invoices shall be addressed as follows:

Executive Director  
Ventura County Transportation Commission  
950 County Square Drive, Suite 207  
Ventura, CA 93003

All invoices, supporting documents, and other financial records relevant to this contract shall be subject to inspection and audit by representatives of COMMISSION, the United States Department of Transportation (DOT), and Controller General of the United States.

If at any time during the term of this Agreement, or for three years after its expiration or termination, authorized representatives of COMMISSION conduct an audit of the CONTRACTOR regarding the services provided under this Agreement, and if such audit finds that COMMISSION's dollar liability for such services is less than payments made by COMMISSION to the CONTRACTOR, then the CONTRACTOR shall agree that the difference shall be either: 1) repaid by the CONTRACTOR to COMMISSION by cash payment, or 2) at COMMISSION's option, credited against any future payments hereunder to the CONTRACTOR.

If such audit finds that COMMISSION's dollar liability for services provided is greater than payments made by COMMISSION to the CONTRACTOR then the difference shall be paid to the CONTRACTOR by COMMISSION by cash payment, provided that in no event shall COMMISSION's maximum obligation, as set forth in this Agreement, be exceeded, unless authorized in writing by COMMISSION.

## **2. Vehicle Maintenance and Accident Records**

The CONTRACTOR shall maintain all vehicle maintenance records required under the laws of the State of California. Such records include but are not limited to the following:

- a) Copies of work orders for all vehicle maintenance activities;
- b) Preventative Maintenance Schedule report copies, retained in file for a one (1) year period;
- c) Originals of the Pre-trip Inspection/Defect reports for each vehicle. Reports containing negative driver notations shall be retained for a minimum of thirty (30) days; reports indicating a vehicle defect shall become a permanent part of the vehicle file.
- d) Reports of all road call maintenance shall be retained as a permanent part of the vehicle file.

The CONTRACTOR shall maintain an individual file for each vehicle used in the operation of services under contract to COMMISSION. In addition to the items above, this file shall include, but not be limited to, the following information by date of action:

- a) All preventive maintenance work, including parts and labor utilized;
- b) All warranty work, if applicable;
- c) All other types of repair work, including parts and labor;
- d) All fuel, fluids, and lubricants used.

Vehicle maintenance records shall be subject to inspection by representatives of COMMISSION and by the CHP.

The CONTRACTOR shall maintain records of any accident and incident (involving persons and/or property) occurring in connection with the provision of services under this Agreement. The CONTRACTOR shall: 1) immediately notify COMMISSION of any such

accident and incident; and 2) provide such records in connection therewith as may be required by COMMISSION. A copy of the accident report shall be placed in the individual vehicle file.

COMMISSION reserves the right to inspect a vehicle that had previously been involved in an accident, before that vehicle is placed in COMMISSION service.

The CONTRACTOR shall provide VCTC with a Smartcard Defect report (form to be provided by VCTC) on a daily basis or as applicable, with a weekly report as to the date the Smartcard contractor was notified of such malfunctions, and when the problem was resolved.

### **3. Provision of Information about CONTRACTOR'S Employees**

CONTRACTOR agrees to comply with California Labor Code section 1072 (c) (1) "If the awarding authority announces that it intends to let a service contract out to bid, the existing service contractor, within a reasonable time, shall provide to the awarding authority the number of employees who are performing services under the service contract and the wage rates, benefits, and job classifications of those employees. In addition, the existing service contractor shall make this information available to any entity that the awarding authority has identified as a bona fide bidder. If the successor service contract is awarded to a new contractor, the existing contractor shall provide the names, addresses, dates of hire, wages, benefit levels, and job classifications of employees to the successor contractor."

### **C. FAILURE TO PERFORM – LIQUIDATED DAMAGES**

COMMISSION shall assess liquidated damages against the CONTRACTOR for failure to perform in accordance with COMMISSION's service objectives. The liquidated damages are not a penalty, but are the parties' best estimates of damages suffered by COMMISSION resulting from the following failures to perform, which cannot be ascertained with certainty at the inception of the contract.

1. Two (2) or more documented instances of violation of maintenance standards within any monthly accounting period.
2. Two (2) or more documented instances of violation of cleanliness standards within any monthly accounting period.

The following liquidated damages shall be applied:

1. Forfeiture of payment for two days worth of service hours per route per revenue vehicle for the first violation of any service objective (Items 1-2 above).
2. Forfeiture of payment for five days worth of service hours per route per revenue vehicle for the second and third violation of any service objective (Items 1-2 above).

In addition, COMMISSION reserves the right to impose:

Cancellation of this Agreement for cause for the fourth violation of any service objective (Items 1-2).

If the CONTRACTOR receives an unsatisfactory terminal rating from the CHP, the CONTRACTOR is expected to correct the deficiencies within 60 days. The CONTRACTOR is expected to operate in the safest possible manner, including operating only road ready equipment.

#### **D. MARKETING/COMMISSION PROMOTIONS**

The CONTRACTOR will participate as needed in any appropriate COMMISSION marketing or promotional activities intended to increase public awareness and ridership.

#### **21. ARBITRATION**

Claims and disputes arising under or related to the performance of this Agreement shall be resolved by arbitration unless the COMMISSION and the CONTRACTOR agree in writing, after the claim or dispute has arisen, to waive arbitration and to have the claim or dispute litigated in a court of competent jurisdiction. Arbitration shall be pursuant to Chapter 3 (Sections 301-393, inclusive) of Division 2 of Title 1 of the California Code of Regulations except that references therein to the "State Contract Act" shall be construed to mean "COMMISSION." (Pursuant to Section 301 of Division 2 of Title 1 of the California Code of Regulations, "Arbitration" means the proceeding for resolving claims pursuant to Sections 10240 through 10245.4 of the Public Contract Code). The arbitration decision shall be decided under and in accordance with California law, supported by substantial evidence and, in writing, contain the basis for the decision, findings of fact, and conclusions of law.

Arbitration shall be initiated by a Demand for Arbitration made in compliance with the requirements of said Chapter 3. A Demand for Arbitration by the CONTRACTOR shall be made not later than 180 calendar days after receipt of the final written decision of the COMMISSION on the claim or dispute or within 240 days after acceptance of this Agreement by the COMMISSION if no written decision has been issued.

Where an election is made by either party to use the Simplified Claims Procedure provided under sections 375-381 of Division 2 Title 1 of the California Code of Regulations, the Parties may mutually agree to waive representation by counsel.

#### **22. DELIVERY**

In case the commencement of service shall be necessarily delayed because of strike, injunctions, government controls, or by reason of any cause or circumstance beyond the control of the CONTRACTOR, the time of completion of delivery shall be extended a number of days to be determined in each instance by mutual agreement between the CONTRACTOR and COMMISSION.



**23. PAYMENT**

COMMISSION will make payment to CONTRACTOR upon receipt of valid invoice, based on the services delivered during the period preceding the billing. Payment will be made on a per revenue vehicle service hour basis.

Payments shall be made within thirty (30) days after CONTRACTOR submits valid invoice for services rendered. The invoice shall be submitted by the 5<sup>th</sup> business day of the month, and will reflect the billing for services rendered. The invoice will include, for each route, as an attachment, a copy of the record verifying fares collected and deposited, a copy of the monthly ridership report, total hours per day, total weekdays and Saturdays of operation, total operating cost and total maintenance and capital cost, Smart Card sales report, total number of tokens collected, if any, and total number of miles. (Sample of required format to be provided by VCTC.)

**24. INTEREST OF EMPLOYEES**

No member officer or employee of COMMISSION, during his/her tenure or for one (1) year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

To each party's knowledge, no Commissioner, officer, or employee of COMMISSION has any interest, whether contractual, non-contractual, financial or otherwise, in this transaction, or in the business of the contracting party other than COMMISSION, and if any such interest comes to the knowledge of either party at any time, a full and complete disclosure of all such information will be made in writing to the other party or parties, even if such interest would not be considered a conflict of interest under Article 4 (commencing with Section 1090) or Article 4.6 (commencing with Section 1120) of Division 4 of Title 1 of the Government Code of the State of California.

**25. INTEREST OF MEMBERS OF CONGRESS**

No member or delegate of the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit arising there from.

**26. EQUAL EMPLOYMENT OPPORTUNITY**

a.) In connection with the execution of this Agreement, the CONTRACTOR shall not discriminate against any employee or applicant for employment because of age, religion, color, sex, national origin, marital status, or any handicap not limiting the ability of the person to perform the job contemplated. The CONTRACTOR shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, sexual orientation, national origin, marital status, or any disability not limiting the ability of the person to perform the job contemplated. Such actions shall include, but not be limited to the following: Employment, up-grading, demotion, or transfer; recruitment, or recruitment advertising; layoff, or termination; rates of pay, or other forms of compensation; and selection for training, including apprenticeship. Such shall be in compliance with Executive Order 11246 amended by Executive Order 11375 and as supplemented in Department of Labor regulations (41 CFR, Part 60)

b.) In connection with the execution of this Agreement, the CONTRACTOR must comply with all aspects of the federal Immigration and Naturalization Act 1986.

**27. CONSERVATION AND AIR POLLUTION CONTROL**

a.) The CONTRACTOR shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the federal Energy Policy and Conservation Act (42 USC, Section 6321 et seq.).

b.) The CONTRACTOR shall comply with all air pollution control rules, regulations, ordinances and statutes which apply to any work performed pursuant to this Agreement, including any air pollution control rules, regulations, ordinances and statutes, specified in Section 11017 of the California Government Code. All CONTRACTORS and suppliers shall be required to submit evidence, if requested, to COMMISSION that the governing air pollution control criteria will be met.

**28. DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

In connection with the performance of this Agreement, the CONTRACTOR shall cooperate with COMMISSION in meeting COMMISSION's commitments and goals with regard to the maximum utilization of Disadvantaged Business Enterprises and will use its best efforts to ensure that Disadvantaged Business Enterprises shall have maximum practicable opportunity to compete for subcontract work under this Agreement. CONTRACTOR shall submit with proposal certification of the actual percentage of DBE utilization for this Agreement.

A DBE is a business owned and controlled by one or more socially and economically disadvantaged individuals. For the purpose of definition, DBE means an enterprise with control by an individual or individuals who is/are Female, African American, Hispanic American, Asian Pacific American, Asian Indian American or Native American, and other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act, as further described in FTA Circular C4716.1A.

Owned and controlled means a business which is: (1) A sole proprietorship legitimately owned by a socially and economically disadvantaged individual; (2) A partnership or joint venture controlled by socially and economically disadvantaged individuals, and in which at least fifty – one percent (51%) of the beneficial ownership interests legitimately are held by socially and economically disadvantaged individuals; or (3) A corporate or other entity controlled by socially and economically disadvantaged individuals, in which at least fifty – one percent (51%) of the voting interests legitimately are held by socially and economically disadvantaged individuals.

VCTC has established a DBE Program pursuant to 49 C.F.R. Part 26, which applies to this Agreement. The requirements and procedures of VCTC's DBE Program are hereby incorporated by reference into this Agreement. Failure by any party to this Agreement to carry out VCTC's DBE Program procedures and requirements or applicable requirements of 49 C.F.R. Part 26 shall be considered a material breach of this Agreement, and may be grounds for termination of this Agreement, or such other

appropriate administrative remedy. Each party to this Agreement shall ensure that compliance with VCTC's DBE Program shall be included in any and all sub-agreements entered into which arise out of or are related to this Agreement.

CONTRACTOR's failure to make good faith efforts to comply with VCTC's DBE Program shall be considered a material breach of this Agreement and may give rise to certain administrative penalties and proceedings, including, but not limited to, those set forth in 49 C.F.R. Part 26.107.

No later than thirty (30) working days after receiving payment of any retention from VCTC for work satisfactorily performed by any of its subcontractors for services rendered arising out of or related to this Agreement, CONTRACTOR shall make full payment to its subcontractors of all compensation, including retentions, due and owing under the relevant subcontract, unless excused by VCTC for good cause pursuant to provisions of Section 1 below.

1. Good Cause: CONTRACTOR may only delay or postpone any payment obligation (or retention) to any of its subcontractors for services rendered arising out of or related to this Agreement where, in VCTC's sole estimation, good cause exists for such a delay or postponement. All such determinations on VCTC's part that good cause exists for the delay or postponement of CONTRACTOR's payment obligation to its subcontractor must be made in writing prior to the time when payment to the subcontractor would have been otherwise due by CONTRACTOR.

## **29. OWNERSHIP OF REPORTS AND DOCUMENTS**

Originals of all documents pertaining to the work performed under this Agreement shall become the property of COMMISSION. Copies may be made for the CONTRACTOR's records but shall not be furnished to others without prior written authorization from COMMISSION.

## **30. RECORD RETENTION**

The CONTRACTOR agrees to retain intact and to provide any data, documents, reports, records, contracts, and supporting materials related to the project for three years from mutually accepted completion of the services rendered under this Agreement.

## **31. INTEGRITY CERTIFICATION**

Unless otherwise permitted by law, any person that is debarred, suspended, or voluntarily excluded may not take part in any covered transaction, either as a participant or principal, during the period of debarment, suspension, voluntary exclusion. Accordingly, neither Federal Transit Administration (FTA) nor its recipient (including COMMISSION) may enter into any transaction with such debarred, suspended, or voluntarily excluded persons during such period. The CONTRACTOR shall complete the certification in Attachment A for itself and its principals, and shall require every other third party contractor/subcontractor to complete the certification in Attachment B for itself and its principals and transmit all certifications to COMMISSION.

**32. TITLE VI OF THE CIVIL RIGHTS ACT 1964**

During the performance of this Agreement, the CONTRACTOR, for itself, its assignees and successors in interest (hereinafter referred to as the "CONTRACTOR") agrees as follows:

**A. COMPLIANCE WITH REGULATIONS**

The CONTRACTOR shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

**B. NONDISCRIMINATION**

In addition to Paragraph 25, above, the CONTRACTOR, with regard to the work performed by it during this Agreement, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The CONTRACTOR shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when this Agreement covers a program set forth in the Regulations. The proposal should include a statement by the CONTRACTOR certifying its compliance with the Regulations.

**C. SOLICITATIONS FOR SUBCONTRACTORS, INCLUDING PROCUREMENT OF MATERIALS AND EQUIPMENT**

In all solicitations either by competitive bidding or negotiation made by the CONTRACTOR for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the CONTRACTOR of the CONTRACTOR's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

**D. INFORMATION AND REPORTS**

The CONTRACTOR shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, accounts, other sources of information and its facilities as may be determined by COMMISSION or the Federal Transportation Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, the CONTRACTOR shall so certify to COMMISSION or the Federal Transportation Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

**E. SANCTIONS FOR NONCOMPLIANCE**

In the event of the CONTRACTOR's noncompliance with nondiscrimination provisions of this Agreement, COMMISSION shall impose contract sanctions as it or the Federal Transportation Administration may determine to be appropriate, including, but not limited to:

1. Withholding of payments to the CONTRACTOR under this Agreement until the CONTRACTOR complies; and/or
2. Cancellation, termination, or suspension of this Agreement, in whole or in part.

**F. INCORPORATION OF PROVISIONS**

The CONTRACTOR shall include the provisions of paragraphs "A" through "F" in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The CONTRACTOR shall take such action with respect to any subcontract or procurement as COMMISSION or the Federal Transportation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: provided, however, that, in the event a CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the CONTRACTOR may request COMMISSION, and in addition, the CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

**33. LABOR PROVISIONS – NON CONSTRUCTION CONTRACTS****A. OVERTIME REQUIREMENTS**

No CONTRACTOR or subcontractor contracting for any part of the work under this Agreement, which may require or involve the employment of laborers or mechanics, shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to work in excess of forty hours in such work week unless such laborer or mechanic receives compensation at a rate not less than that required under federal Fair Labor Standards regulations.

**B. VIOLATION; LIABILITY FOR UNPAID WAGES; LIQUIDATED DAMAGES**

In the event of any violation of the clause set forth in subparagraph (b)(1) of 29 CFR Section 5.5, the CONTRACTOR and any subcontractor responsible thereafter shall be liable for the unpaid wages and payroll taxes. In addition, such CONTRACTOR and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (b)(1) of 29 CFR Section 5.5. CONTRACTOR shall operate under the applicable provisions of the Federal Fair Labor Standards regulations.

**C. WITHHOLDING FOR UNPAID WAGES AND LIQUIDATED DAMAGES**

The DOT or COMMISSION shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld, from any monies payable on account of work performed by the CONTRACTOR or subcontractor under any such contract or any other Federal contract with the same prime CONTRACTOR, or any other Federally-assisted contract which is held by the same prime CONTRACTOR, such sums as may be determined to be necessary to satisfy any liabilities of such CONTRACTOR or subcontractor for unpaid wages/liquidated damages as provided in the clause set forth in subparagraph (b)(2) of 29 CFR Section 5.5.

**D. NON-CONSTRUCTION GRANTS**

The CONTRACTOR or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of this Agreement for all laborers and mechanics, including guards and watchmen, working under this Agreement. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, COMMISSION shall require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the CONTRACTOR or subcontractor for inspection, copying, or transcription by authorized representatives of the DOT and the Department of Labor, and the CONTRACTOR or subcontractor will permit such representatives to interview employees during working hours on the job.

**E. SUBCONTRACTS**

The CONTRACTOR or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (A) through (E) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontract. The prime CONTRACTOR shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (A) through (E) of this paragraph.

**34. RESTRICTIONS ON LOBBYING**

CONTRACTOR agrees that no federal funds will be paid, by or on behalf of the CONTRACTOR to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement. CONTRACTOR must certify with this provision by signing the assurances found in Attachment C.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the CONTRACTOR shall complete and submit Standard Form -- "Disclosure form to Report Lobbying" in accordance with its instructions (Attachment D).

### **35. ENVIRONMENTAL**

The CONTRACTOR shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857 (h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency (EPA) regulations (40 C.F.R., Part 15), which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to FTA and to the EPA Assistant Administrator for Enforcement.

### **36. ENERGY CONSERVATION**

The CONTRACTOR shall comply with mandatory standards and policies relating to energy efficiency that are contained in applicable State energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. 6321 et seq.

### **37. ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES**

The CONTRACTOR agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101 et seq. and 49 U.S.C. 322; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794; Section 16 of the Federal Transit Act, as amended, 49 U.S.C. app. 1612; and regulations and any amendments thereto.

### **38. AUDIT AND INSPECTION**

The CONTRACTOR agrees to permit the Secretary and the Comptroller General of the United States, or their authorized representative, to inspect all project work, materials, payrolls, and other data and records involving this Agreement, and to audit the books, records, and accounts involving this Agreement as it affects the project.

### **39. NO OBLIGATION BY THE FEDERAL GOVERNMENT**

- (1) The COMMISSION and CONTRACTOR acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to the COMMISSION, CONTRACTOR, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- (2) The CONTRACTOR agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further

agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**40. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS**

- (1) The CONTRACTOR acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, the CONTRACTOR certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this Agreement is being performed. In addition to other penalties that may be applicable, the CONTRACTOR further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the CONTRACTOR to the extent the Federal Government deems appropriate.
- (2) The CONTRACTOR also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307 (n)(1) on the CONTRACTOR, to the extent the Federal Government deems appropriate.
- (3) The CONTRACTOR agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

**41. CONTRACTS INVOLVING FEDERAL PRIVACY ACT REQUIREMENTS**

The following requirements apply to the CONTRACTOR and its employees that administer any system of records on behalf of the Federal Government under any contract:

- (1) The CONTRACTOR agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the CONTRACTOR agrees to obtain the express consent of the Federal Government before the CONTRACTOR or its employees operate a system of records on behalf of the Federal Government. The CONTRACTOR understands that the requirements for the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
- (2) The CONTRACTOR also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.



(3) The CONTRACTOR agrees to the comply with applicable transit employee protective requirements as follows:

(a) General Transit Employee Protective Requirements – To the extent that FTA determines that transit operations are involved, the CONTRACTOR agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The CONTRACTOR agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection, however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for non-urbanized areas authorized by 49 U.S.C. §5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

(b) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities – If this Agreement involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body sub recipient for which work is performed on the underlying contract, the CONTRACTOR agrees to carry out the project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth in Grant Agreement or Cooperative Agreement with the state. The CONTRACTOR agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

(c) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Non-urbanized Areas – If this Agreement involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the CONTRACTOR agrees to comply with the terms and conditions of the Special Warranty for the Non-urbanized area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

(4) The CONTRACTOR also agrees to include any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

**42. NOTICE OF FEDERAL REQUIREMENTS**

Federal laws, regulations, policies and related administrative requirements may be modified from time to time, and the changed requirements will apply to the project as required.

**43. CONTRACT PROVISIONS****A. TERMINATION****1. Termination for Convenience of COMMISSION**

This Agreement may be terminated by the COMMISSION at any time upon sixty (60) days written notice to CONTRACTOR. In full discharge of any obligation to CONTRACTOR in respect of this Agreement and such termination, the COMMISSION shall pay for the costs and non-cancelable commitments incurred prior to the date of termination costs. In no event, however, shall the COMMISSION be obligated to pay CONTRACTOR any amount in excess of the total funds committed for this project by the COMMISSION.

Upon the effective date of the written notice of termination, the CONTRACTOR shall cease performance of services to the extent specified in the notice. COMMISSION shall pay the CONTRACTOR allowable costs incurred.

**2. Termination for Default**

Subject to the provisions below, COMMISSION may, by written notice of default to the CONTRACTOR, terminate this Agreement in whole or in part if the CONTRACTOR fails to perform the transportation services described herein within the time and in the manner specified in this Agreement or any extension thereof, or fails to perform any of the other provisions of this Agreement.

COMMISSION's right to terminate this Agreement may be exercised if the CONTRACTOR does not cure the condition(s) constituting default within ten (10) calendar days after receipt of written notice from COMMISSION specifying the failure.

**3. CONTRACTOR Liability for Excess Costs**

If COMMISSION terminates this Agreement in whole or in part due to the default of the CONTRACTOR as described above, it may acquire, under terms and in the manner COMMISSION considers appropriate, services similar to those terminated, and the CONTRACTOR shall be liable to COMMISSION for any excess costs for those services.

**4. CONTRACTOR Liability for Excess Costs in the Event of Default due to Circumstances Beyond Its Control**

Except for default of subcontractors at any tier, the CONTRACTOR shall not be liable for any excess costs if the failure to perform contract services arises from causes beyond the control and without the fault or negligence of the CONTRACTOR. Examples of such causes include: acts of God; natural disasters; quarantine restrictions, or, unusually

severe weather, as they may effect the direct operation of transit service in the area wherein CONTRACTOR service is proposed. In each instance, the failure to perform must be beyond the control and without the negligence of the CONTRACTOR.

#### **5. Payment for Conforming Services**

Upon termination of this Agreement due to CONTRACTOR default as described herein, COMMISSION shall pay the CONTRACTOR for conforming services actually provided to date of termination, less previous payments.

#### **6. Termination by the CONTRACTOR**

The CONTRACTOR shall have the right to terminate this Agreement upon the provision of ninety (90) days written notice to COMMISSION. In the event of such termination by the CONTRACTOR, COMMISSION shall pay the CONTRACTOR for conforming services actually provided to the effective date of termination, less previous payments. All finished and unfinished documents, records, and reports relating to services provided under this Agreement shall become the property of COMMISSION.

### **B. DISPUTES AND CLAIMS; PROCEDURE**

- 1) **GENERAL.** Any and all decisions made on appeal pursuant to this Subsection shall be in writing. Any "decision" purportedly made pursuant to this Subsection which is not in writing shall not be binding upon the COMMISSION and should not be relied upon by the CONTRACTOR.

Filing or giving written notice to the COMMISSION within ten (10) calendar days of the origin of a claim is prerequisite to recovery under a CONTRACTOR's claim for additional compensation; nothing in this subsection shall excuse CONTRACTOR from its duty to file or give the required notices, or from performing other duties required by this Agreement.

- 2) **ADMINISTRATIVE REVIEW.** Prior to demand for arbitration, the CONTRACTOR shall exhaust its administrative remedies by attempting to resolve the dispute or claim with COMMISSION's staff.

The VCTC Executive Director shall address disputes or claims within twenty-eight (28) calendar days after receiving such request and all necessary supporting data. The Director's decision on the dispute or claim shall be the COMMISSION's final decision.

Requests for review made to the COMMISSION's staff may be either oral or written. Requests for review made to the VCTC Executive Director shall be made in writing with supporting evidence attached.

Each request for review shall be submitted by the CONTRACTOR within twenty-one (21) calendar days of receipt of the decision to be reviewed.

**44. SIGNATURES**

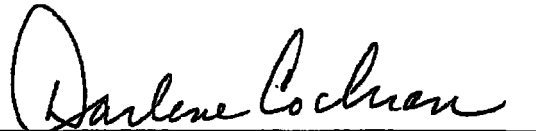


IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives. Each party represents to the other party that this Agreement has been executed by a duly authorized agent of the party so representing.

**COMMISSION:****VENTURA COUNTY TRANSPORTATION  
COMMISSION**

By

  
KATHY LONG, Chairperson**CONTRACTOR:****CUSA CC, LLC**

By

  
DARLENE COCHRAN, Vice President/  
General Manager**ATTEST:**  
Clerk of the Commission**APPROVED AS TO FORM:**  
Mitchel B. Kahn, General Counsel  
Commission**APPROVED AS TO CONTENT:**  
Darren Kettle, Executive Director  
Commission

**Attachment #1****SCOPE OF WORK  
DESCRIPTION OF CAPITAL EQUIPMENT**

Services to be performed include the provision of vehicles as follows, and all maintenance requirements and miscellaneous equipment associated with these vehicles:

Contractor shall maintain the following vehicles for use in VISTA service, and, in addition, shall maintain at least three backup vehicles at all times.

**Vehicle Type/Model/Manufacturer**

At least 25 "over the road coach" vehicles, either VanHool Model C2045L, MCI J Model buses, or equivalent (as approved by VCTC).

All vehicles will be model year 2002 or newer, with engines of 275 horsepower or greater, and equipped with wheelchair lifts and bicycle racks. Passenger capacity will be 56 with no wheelchair passengers, 52 with one wheelchair onboard, 48 with two wheelchairs onboard.

Upon receipt of a notice to proceed, the CONTRACTOR will acquire and install up to 25 particulate traps certified by the California Air Resources Board (CARB). COMMISSION will provide reimbursement, up to a maximum of \$400,000, for the cost of the particulate trap purchase and design (mapping), and the CONTRACTOR will pay for the installation of the particulate traps. The CONTRACTOR also agrees to uninstall the traps and return them to COMMISSION or purchase the devices from COMMISSION, at the agreed depreciated value, if the buses are no longer used by COMMISSION /VISTA within the "useable life" of the particulate traps, in compliance with Federal Transit Administration regulations and state laws dealing with public property.

**SCOPE OF WORK  
ROUTE AND SERVICE DESCRIPTION****VISTA HIGHWAY 101**

The following is a general description of the VISTA-HWY 101 service.

The route is an intercity, fixed route, express bus service along the Highway 101 corridor in Ventura County. The route includes stops at: Thousand Oaks Transit Center (Rancho Road), Oaks Mall and the Conejo Industrial Park in Thousand Oaks; Pardee Plaza, Leisure Village, Camarillo Metrolink Station, Camarillo Premium Outlets, and Carmen Plaza in Camarillo; the Esplanade Mall in Oxnard; the County Government Center, Ventura College, County Medical Center, St. Bonaventure High School, Ventura Pier, and the Pacific View Mall in Ventura.

On weekdays service will operate between approximately 6 am and 8 PM. In the morning and afternoon peak hours, regular buses will run on approximately 60-70 minute headways. In the off-peak hours, the headways will be approximately 120

minutes. The peak hours will be defined in the final schedule, but it will be a minimum of three hours in the morning and three hours in the afternoon.

Saturday service will operate between approximately 7 AM and 7 PM. In the morning and evening peak hours, the buses will run on approximately 60-70 minute headways. In the off-peak hours, the headways will be approximately 120 minutes. The peak hours will be defined in the final schedule, but it will be a minimum of three hours in the morning and three hours in the afternoon.

The schedule will be arranged to provide timed transfers to: Thousand Oaks Transit and the VISTA-EAST service in Thousand Oaks; Camarillo Area Transit in Camarillo; South Coast Area Transit (SCAT), the VISTA-HWY 126 and VISTA Coastal Express services in Ventura, as feasible.

### **VISTA Hwy 126 Service**

The VISTA Hwy 126 service is an intercity, fixed route, express bus service along the State Route 126 corridor between Fillmore, Santa Paula and San Buenaventura. The route includes stops at: Fillmore Senior Center in Fillmore; Santa Paula City Hall and K-Mart Park and Ride in Santa Paula; and Wells Center, County Government Center, Ventura College, St. Bonaventure High School, the County Medical Center, Ventura Pier and the Pacific View Mall in Ventura.

On weekdays service will operate between approximately 6 am and 8 PM. In the morning and afternoon peak hours, regular buses will run on approximately 60-70 minute headways. Morning service will be supplemented with a third bus. In the off-peak hours, the headways may increase to approximately 120 minutes. The peak hours will be defined in the final schedule, but it will be a minimum of three hours in the morning and three hours in the afternoon.

Saturday and Sunday service will operate between approximately 8 AM and 6 PM. In the morning and evening peak hours, the buses will run on approximately 60-70 minute headways. In the off-peak hours, the headways may increase to approximately 120 minutes. The peak hours will be defined in the final schedule, but it will be a minimum of three hours in the morning and three hours in the afternoon.

The schedule will be arranged to provide timed transfers to local and intercounty transit providers such as Santa Paula and Fillmore Dial-a-Rides, the VISTA 101, VISTA Coastal Express, VISTA Conejo Connection and SCAT, as feasible.

### **VISTA East County Service**

The following is a general description of the VISTA-EAST COUNTY service.

The route is an intercity, fixed route, express bus service in eastern Ventura County with connections to adjacent Los Angeles County. The route includes stops at: Thousand Oaks Transit Center (Rancho Road), Oaks Mall, Westlake Boulevard/Townsgate Road and the Thousand Oaks Library in Thousand Oaks; Moorpark College, Princeton/Amherst and the Moorpark Metrolink Station in Moorpark; and the Simi Town Center in Simi Valley.

On weekdays service will operate between approximately 6 am and 7 PM. In the morning and evening peak hours, the buses will run on approximately 60-minute headways. In the off-peak hours, the headways may increase to approximately 120 minutes. The peak hours will be a maximum of three hours in the morning and three hours in the afternoon.

Saturday service will operate between approximately 7 AM and 6 PM. The buses will run on approximately 60-minute headways. In the off-peak hours, the headways may increase to approximately 120 minutes. The peak hours will be defined in the final schedule, but it will be a minimum of three hours in the morning and three hours in the afternoon.

The schedule will be arranged to provide timed transfers with local and intercounty transit providers such as the Simi Valley Transit (which provides connecting access to the Simi Metrolink Station); Thousand Oaks Transit, the VISTA-101 service, Moorpark Transit, and Los Angeles MTA as feasible.

### **VISTA-CONEJO CONNECTION**

This route provides intercity, fixed route commuter express bus service between Ventura County and the Warner Center in Los Angeles County. The route will include stops at the Oxnard Transportation Center and Oxnard Esplanade in Oxnard, the Las Posas Park & Ride Lot in Camarillo; Wendy Drive/Hillcrest and Rancho Road Park & Ride Lot in Thousand Oaks; and several stops within the Warner Center in Woodland Hills. In addition, morning northbound and afternoon southbound trips may include one or more of the following stops: Pacific View Mall in Ventura; Carmen Plaza, Camarillo Metrolink and Pardee Plaza in Camarillo; Westlake Townsgate in Thousand Oaks.

Service will consist of two roundtrips in the morning and two roundtrips in the afternoon/evening. Service will operate between approximately 6 AM and 11 AM and between approximately 2:30 PM and 6:30 PM weekdays. In the morning and evening commute hours, buses will have approximately 30 minute headways.

### **VISTA - CSUC/CAMARILLO METROLINK STATION**

This route provides express bus service between the Camarillo Metrolink Station and the CSU-Channel Islands campus in Camarillo. Service will operate Monday-Friday between 7:00 a.m. and 10:30 p.m. and Saturday between 7:30 am and 5:30 pm. Weekday service will operate from the Metrolink Station every 15-minute during peak hours (3 p.m. to 10:30 p.m.) and every 30 minutes during non-peak. Saturday service will be every 30 minutes throughout the hours of service. The service will coordinate with local services, including the VISTA 101 service in Camarillo, the Camarillo Dial A Ride service and the rail services at the Camarillo Metrolink Station.

### **VISTA - CSUC/OXNARD "C" STREET TRANSFER CENTER**

This service provides express bus service between the "C" Street Center in Oxnard and the CSUC-Channel Islands campus in Camarillo. Service will operate Monday-Friday between 7:00 a.m. and 10:55 p.m., and Saturday between 7:00 p.m. and 5:55 p.m. This service will coordinate with SCAT buses in Oxnard. Service will run every 60 minutes throughout the day, Monday-Saturday.

**VISTA – COASTAL EXPRESS****A. Service Description**

This intercounty express fixed route service operates between the city of San Buenaventura in Ventura County and the cities of Carpinteria and Santa Barbara in Santa Barbara County. During weekday peak-hours, service will be extended to the University of California Santa Barbara (UCSB) and the City of Goleta in Santa Barbara County. During peak hours some morning northbound buses and some afternoon southbound buses will include a stop in the City of Oxnard. Service will operate during the hours shown in section B.

The areas served by this route are: the City of San Buenaventura- three stops, Santa Barbara - five stops, in the City of Carpinteria- two stops, and during weekday peak-hours, in the City of Goleta 6 stops, UCSB (1 stop) and the City of Oxnard (1 stop).

**B. Days/Hours of Operation**

The intercounty express service will be provided seven days per week. No service is provided on New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. Details about the services are listed below:

<u>Route</u>	<u>Hours of Operation</u>	<u># Buses</u>	<u>Bus Headway</u>
Intercounty Express Bus	4:30 a.m. - 9:00 a.m. and 3:00 PM - 7:00 PM Monday through Friday (During peak hours, service will extend to UCSB and Goleta.)	8 AM buses 9 PM buses	10-60 min
	9:00 a.m. - 3:00 p.m. Monday through Friday (Service to/from downtown Santa Barbara)	2 to 3	60-90 min
	6:30 AM - 7:30 PM. Saturday and Sunday (Service to/from downtown Santa Barbara)	2	60-90 min

**FARES FOR IN-COUNTY SERVICE**

VISTA-HWY 101, 126, East County, and CSUCI services- one-way passenger fares are: \$1 for adults between 21 and 61 years of age; \$1 for youth 6 to 20 years; and 50 cents for seniors aged 62 and older and for persons with disabilities. Children 5 and under ride free if accompanied by fare paying adult.

The SmartCard Passport fares are: adults \$40; youth \$40; seniors and persons with disabilities \$20. Purchased monthly, this passport is valid for unlimited trips on all Ventura County fixed-route public bus systems (not including inter-county service). A cash debit feature is also available.



For an additional 50 cents per trip, holders of the base pass may use the Dial-A-Rides, except on systems where this offer is not valid.

### **FARES FOR CONEJO CONNECTION AND COASTAL EXPRESS**

~~In-County Passengers on Conejo Connection and Coastal Express-~~ For passengers riding Conejo Connection or Coastal Express only within Ventura County, fares shall be the same as for other in-county routes (see above).

For all other passengers fares are as follows:

**Cash Fares:** \$2.00 for riders between 5 and 61 years of age and \$1.00 for seniors aged 62 years and older, and persons with disabilities. Children under 5 years of age ride free if accompanied by fare paying adult. Exact change is required.

**SmartCard Passport Fares:** Age 5 through 61- \$75; seniors and persons with disabilities \$35. Purchased monthly, this passport is valid for unlimited trips on all Ventura County fixed-route public bus systems. The cash debit feature is sold in \$10 increments. CONTRACTOR'S drivers will recharge the SmartCard on the buses, using the SmartCard equipment provided by VCTC.

**Token Program:** Purchased by social service agencies to be used on VISTA services only. Social service agencies provide clients with tokens which are then used as payment for bus rides. The tokens are reimbursed by VCTC at \$1 per token to the VISTA service operators, and two tokens are required for each full-fare passenger for each trip on Conejo Connection and Coastal Express.

**Attachment #2****SERVICE HOURS AND COMPENSATION**

Pursuant to Section 4 of the Agreement, the maximum compensation payable to CONTRACTOR for providing the fully-maintained vehicles for the service described in this agreement shall be as follows:

Effective date: commencing July 1, 2009 (until revised by agreement of Executive Director of COMMISSION and General Manager of CONTRACTOR)

**VISTA HIGHWAY 101**

	2009- 2010	2010- 2011	2011- 2012
Weekdays	256	258	257
Saturdays	51	50	53
Hours per weekday	26.22	26.22	26.22
Hours per Saturday	19.53	19.53	19.53
Total Hours	7708.35	7741.26	7773.63
Lease Cost per hour	\$ 55.59	\$ 57.54	\$ 59.56
Yearly Cost not to exceed	\$ 428,507.18	\$ 445,432.10	\$ 462,997.40

**VISTA HIGHWAY 126**

	2009- 2010	2010- 2011	2011- 2012
Weekdays	256	258	257
Saturdays plus Sundays	103	101	103
Hours per weekday	25.15	25.15	25.15
Hours per Saturday	18.67	18.67	18.67
Total Hours	8361.41	8374.37	8386.56
Lease Cost per hour	\$ 55.59	\$ 57.54	\$ 59.56
Yearly Cost not to exceed	\$ 464,810.78	\$ 481,861.25	\$ 499,503.51

VISTA EAST COUNTY

	2009- 2010	2010- 2011	2011- 2012
Weekdays	256	258	257
Saturdays	51	50	53
Hours per weekday	22.47	22.47	22.47
Hours per Saturday	15.43	15.43	15.43
Total Hours	6539.25	6568.76	6592.58
Lease Cost per hour	\$ 55.59	\$ 57.54	\$ 59.56
Yearly Cost not to exceed	\$ 363,516.91	\$ 377,966.45	\$ 392,654.06

VISTA CONEJO CONNECTION

	2009- 2010	2010- 2011	2011- 2012
Weekdays	256	258	257
Saturdays	NA	NA	NA
Hours per weekday	13.3	13.3	13.3
Total Hours	3404.8	3431.4	3418.1
Lease Cost per hour	\$ 55.59	\$ 57.54	\$ 59.56
Yearly Cost not to exceed	\$ 189,272.83	\$ 197,442.76	\$ 203,582.04

VISTA COASTAL EXPRESS

	2009- 2010	2010- 2011	2011- 2012
Weekdays	256	258	257
Saturdays	51	50	53
Sundays	52	51	50
Hours per weekday	52.72	52.72	52.72
Hours per Saturday	20.92	20.92	20.92
Hours per Sunday	20.37	20.37	20.37
Total Hours	15622.48	15686.63	15676.3
Lease Cost per hour	\$ 55.59	\$ 57.54	\$ 59.56
Yearly Cost not to exceed	\$ 868,453.66	\$ 902,608.69	\$ 933,680.43

VISTA CSUCI Camarillo Metrolink

	2009- 2010	2010- 2011	2011- 2012
Weekdays	256	258	257
Saturdays	51	50	53
Hours per weekday	18.75	18.75	18.75
Hours per Saturday	8.33	8.33	8.33
Total Hours	5224.83	5254	5260.24
Lease Cost per hour	\$ 55.59	\$ 57.54	\$ 59.56
Yearly Cost not to exceed	\$ 290,448.30	\$ 302,315.16	\$ 313,299.89

VISTA CSUCI Oxnard C Street

	2009- 2010	2010- 2011	2011- 2012
Weekdays	256	258	257
Saturdays	51	50	53
Hours per weekday	14.67	14.67	14.67
Hours per Saturday	10.08	10.08	10.08
Total Hours	4269.6	4288.86	4304.43
Lease Cost per hour	\$ 55.59	\$ 57.54	\$ 59.56
Yearly Cost not to exceed	\$ 237,347.06	\$ 246,781.00	\$ 256,371.85

**AMENDED AND RESTATED AGREEMENT  
FY 2009-10, FY 2010-11, FY 2011-12**

**FOR OPERATING SERVICES ASSOCIATED WITH  
VISTA HIGHWAY 101, VISTA HIGHWAY 126, VISTA EAST COUNTY, VISTA CONEJO  
CONNECTION, VISTA CSUCI, VISTA COASTAL EXPRESS ROUTES**

This is an amended and restated agreement ("Agreement") by and between Ventura County Transportation Commission (VCTC), hereinafter also referred to as "COMMISSION," and CUSA CC, LLC dba Coach America Los Angeles, a Delaware Corporation, hereinafter referred to as "CONTRACTOR".

**RECITALS**

**WHEREAS**, the Ventura County Transportation Commission ("COMMISSION") has contracted with CUSA CC, LLC, dba Coach America, Los Angeles ("CONTRACTOR") to provide fixed route transit service; and

**WHEREAS**, COMMISSION and CONTRACTOR are in the second year of a five year agreement to provide this service; and

**WHEREAS**, COMMISSION wishes for CONTRACTOR to continue to provide this service for the remainder of the original contract term; and

**WHEREAS**, COMMISSION adopts an annual budget for VISTA fixed route services, which provides a maximum amount to be paid for lease and operation of VISTA buses; and

**WHEREAS**, COMMISSION intends for its Executive Director to have the discretion to implement changes to the VISTA schedules and service within the parameters of that budget; and

**WHEREAS**, COMMISSION wishes to replace the "AGREEMENT FY 2007-08, FY 2008-09, FY 2009-10, FY 2010-11, FY 2011-12 FOR OPERATING SERVICES ASSOCIATED WITH VISTA TRANSIT SERVICE VISTA HIGHWAY 101, VISTA HIGHWAY 126, VISTA EAST COUNTY, VISTA CONEJO CONNECTION, VISTA CSUCI, VISTA COASTAL EXPRESS ROUTES" with a new agreement which accomplishes the above purpose; and

**WHEREAS**, CONTRACTOR agrees to these contract modifications;

**NOW, THEREFORE**, COMMISSION and CONTRACTOR hereby agree as follows:

**1. STATEMENT OF AGREEMENT**

Effective on July 1, 2009 this Agreement supersedes the previous agreement of the above parties entitled, "AGREEMENT FY 2007-08, FY 2008-09, FY 2009-10, FY 2010-11, FY 2011-12 FOR OPERATING SERVICES ASSOCIATED WITH VISTA TRANSIT SERVICE VISTA HIGHWAY 101, VISTA HIGHWAY 126, VISTA EAST COUNTY, VISTA CONEJO CONNECTION, VISTA CSUCI, VISTA COASTAL EXPRESS ROUTES."

COMMISSION hereby engages CONTRACTOR, and CONTRACTOR hereby accepts such engagement, to perform the services on the terms and conditions herein described and for

the compensation herein provided, all as set forth in this agreement. CONTRACTOR hereby warrants that it has the qualifications, experience and facilities to properly perform said services and hereby agrees to undertake and complete the performance thereof for the professional services as an independent contractor, and it does not render CONTRACTOR as employee of the COMMISSION for any purpose whatsoever. CONTRACTOR shall at all times retain the status of independent contractor.

## **2. DESCRIPTION OF SERVICES**

The services to be performed by CONTRACTOR are those set forth in the Scope of Work of this Agreement, set forth in Attachment #1. Subject to the annual budgets adopted by the COMMISSION during the term of this Agreement, Attachment #1 may be modified by mutual written agreement of the Executive Director of the COMMISSION and the General Manager of CONTRACTOR. By reference, the services as outlined in the associated Request for Proposals and CONTRACTOR's proposal to provide this service are also made a part of this Agreement.

## **3. CHANGES IN THE WORK**

It shall be understood and agreed by the CONTRACTOR that COMMISSION, and to the extent authorized hereby, the Executive Director of the COMMISSION, may, at any time during the progress of this project, increase, decrease, or modify the transportation services to be performed by the CONTRACTOR. Any such change shall not invalidate this Agreement, and the CONTRACTOR shall agree to perform the work as altered as if it had been a part of the original contract.

If any such changes cause an increase or decrease in the number of hours of transportation service provided by the CONTRACTOR for this project, COMMISSION will negotiate with CONTRACTOR for an adjustment to CONTRACTOR's compensation based upon its average hourly operating cost.

## **4. COMPENSATION**

The total compensation payable to CONTRACTOR, by COMMISSION, for above stated services is not to exceed the sums listed in Attachment #2 for each year of service. Subject to the annual budgets adopted by the COMMISSION during the term of this Agreement, Attachment #2 may be modified by mutual written agreement of the Executive Director of the COMMISSION and the General Manager of CONTRACTOR.

The COMMISSION shall not be obligated to pay CONTRACTOR for costs incurred in excess of the amounts shown in Attachment #2, as it may be modified from time to time as provided by this Section 4. COMMISSION will pay CONTRACTOR at the hourly rates listed on Attachment #2 as it may be modified from time to time, for the service actually provided, and identified in the Scope of Work. CONTRACTOR is not obligated to provide service beyond that stated in the contract compensation amount.

## **5. KEY PERSONNEL**

Any individuals set forth as part of the project team by the CONTRACTOR are considered essential to the work being performed under this Agreement; substitution for these individuals will not be made without the prior written consent of the COMMISSION.

## **6. ASSIGNMENT AND SUBCONTRACTING**

6.1 – This agreement is for professional services and CONTRACTOR may not assign or subcontract its rights under this agreement nor delegate the performance of its duties without the COMMISSION's prior written consent.

6.2 – CONTRACTOR, its assigns and subcontractors shall complete all professional services under this Agreement and as set forth in Scope of Work. Any subcontract, assignment or delegation without COMMISSION's prior written consent shall be void.

## **7. RELATIONSHIP OF THE PARTIES**

Both parties to this agreement agree that the relationship of the parties shall be that CONTRACTOR is an independent contractor and shall represent the will of COMMISSION only as the result of the subject matter of this contract, and not as the manner in which the services herein are performed, except as provided in Scope of Work, set forth in Attachment #1. CONTRACTOR shall have complete control and responsibility over the details and performance of the services herein required to complete the agreement, and in no event shall CONTRACTOR be considered an officer, agent, servant or employee of COMMISSION.

## **8. INSURANCE**

### **A. LIABILITY INSURANCE**

CONTRACTOR shall, at its own cost and expense, procure and maintain during the term of this Agreement liability insurance coverage of the following types and written on an "occurrence" form, and with not less than the following limits of liability:

**GENERAL PUBLIC LIABILITY AND PROPERTY DAMAGE - \$10 million per Occurrence**

This coverage shall include, but not be limited to:

- 1) Operations – Premises Liability;
- 2) Independent Contractors Liability – Broad Form;
- 3) Contractual Liability covering the CONTRACTOR's obligations herein;
- 4) Personal Injury Liability extending to claims arising from employees of the CONTRACTOR;
- 5) Completed Operations and Products Liability.

**AUTOMOBILE LIABILITY INSURANCE FOR PROPERTY AND LIABILITY COVERAGE FOR OWNED AND NON-OWNER HIRED AUTOMOBILES - \$10 million per Occurrence**

No later than 10 working days prior to the commencement of work, CONTRACTOR shall furnish COMMISSION with a Certificate of Insurance evidencing the above coverage requirements.

THE CERTIFICATE SHALL ALSO CONTAIN THE FOLLOWING LANGUAGE:

- 1) "The Agencies as specified by the VISTA Agreements including the Ventura County Transportation Commission, the City of Camarillo, the City of Fillmore, the City of Moorpark, the City of Oxnard, the City of San Buenaventura, the City of Santa Paula, the City of Simi Valley, the City of Thousand Oaks, the City of Carpinteria, the City of Santa Barbara, the City of Goleta, the County of Santa Barbara, the Santa Barbara County Air Pollution Control District, the Santa Barbara County Association of Governments; the State of California, the Trustees of California State University and the employees, officers and agents of each of them; and the County of Ventura are additional insured."
- 2) "The liability assumed by CONTRACTOR under the provisions of the Hold Harmless and Indemnity clause contained in the Agreement is covered by the terms of this policy."
- 3) "The policy will not be canceled or materially changed without thirty (30) days prior written notice to COMMISSION."

## **B. WORKERS COMPENSATION INSURANCE**

As required by Section 1860 of the California Labor Code (Chapter 1000, Statutes of 1965), the CONTRACTOR shall secure the payment of Worker's Compensation to its employees in accordance with the provisions of Section 3700 of the California Labor code and shall furnish COMMISSION with certificate evidencing such coverage.

## **9. CONTRACT BONDS**

Prior to the effective date of this Agreement, the CONTRACTOR shall file with the VCTC surety bonds or a Letter of Credit in the amounts and for purposes noted below. Bonds shall be duly executed by an admitted surety insurer in the State of California. The CONTRACTOR shall pay all bond premiums, costs, and incidentals.

Each bond shall incorporate, by reference, the contract and be signed by both the CONTRACTOR and surety provider, and the signature of the authorized agent of the surety shall be notarized.

The CONTRACTOR shall provide two good sufficient surety bonds. The "Payment Bond" (Material and Labor Bond) shall be for not less than 50 percent of the highest annual contract price, to satisfy claims of material suppliers and of mechanics and laborers employed by it on the Contract. The bond shall be maintained by the CONTRACTOR in full force and effect as defined below, and until all claims for materials and labor are paid, and shall otherwise comply with the Civil Code.

The "performance bond" shall be for 25 percent of the highest annual contract price to guarantee faithful performance of all work, within the time prescribed, in a manner satisfactory to VCTC.

Should any bond become insufficient, the CONTRACTOR shall renew the bond within 10 days after receiving notice from VCTC.



Should any surety at any time be unsatisfactory to the VCTC, notice will be given the CONTRACTOR to that effect. No further payments shall be deemed due or will be made under the contract until a new surety shall qualify and be accepted by VCTC.

Changes in the Contract, or extensions of time, made pursuant to the contract, shall in no way release the CONTRACTOR or surety from their obligations. Notice of such changes or extensions shall be waived by the surety.

The bond shall be accompanied by the documents required by Code of Civil Procedure Section 995.660 which are:

- A) The original, or a certified copy, of the un-revoked appointment, power of attorney, bylaws, or other instrument entitling or authorizing the person who executed the bond to do so.
- B) A certified copy of the certificate of authority of the insurer issued by the Insurance Commissioner of the State of California.
- C) A certificate from the County Clerk of the applicable County that the certificate of authority of the insurer has not been surrendered, revoked, canceled, annulled, or suspended or, in the event that it has, that renewed authority has been granted.
- D) A financial statement of the assets and liabilities of the insurer at the end of the quarter calendar year prior to 30 days next preceding the date of the execution of the bond. The financial statement shall be made by an officer's certificate as defined in Section 173 of the Corporations Code. In the case of a foreign insurer, the financial statement may, instead of an officer's certificate, be verified by the oath of the principal officer or manager residing within the United States.

The material and labor bond must remain in effect until the expiration of six months after the period in which verified claims may be filed as provided in Section 1192.1 of the Code of Civil Procedure, and the performance bond must be paid up and in effect for 3 months after the end of the contract.

#### **10. INDEMNIFICATION**

CONTRACTOR shall defend, indemnify and hold harmless the Ventura County Transportation Commission, the County of Ventura, the City of Camarillo, the City of Fillmore, the City of Moorpark, the City of Oxnard, the City of San Buenaventura, the City of Santa Paula, the City of Simi Valley, the City of Thousand Oaks, the City of Carpinteria, the City of Santa Barbara, the City of Goleta, the County of Santa Barbara, the Santa Barbara County Air Pollution Control District, the Santa Barbara County Association of Governments, the State of California, the Trustees of California State University and the employees, officers and agents of each of them (the "VCTC Group") from all liability costs, damages, or expenses, including attorneys' fees arising out of or incurred in connection with the CONTRACTORS and its employees/agents' and subcontractors' acts or omissions in the performance of the services provided pursuant to this agreement, and agrees at its own cost, expense and risk to defend any and all resulting actions, suits, or other legal proceedings brought or instituted against VCTC Group arising out of its performance of the Contract services, and to pay and satisfy any resulting judgments, claims, damages and costs.

The CONTRACTOR agrees to defend and pay entire cost of defending any claim or suit whenever or wherever made or brought against the VCTC based upon an infringement or alleged infringement of such letters patent, and to indemnify and save harmless the VCTC Group from and against any and all liability, damage, loss or injury adjudged or sustained in any such claim or suit, or adjudged or sustained by reason of the equipment to be furnished hereunder constituting an infringement of any letters patent or adjudged or sustained by reason of inability of the VCTC Group to use said equipment because of any infringement or alleged infringement of any letters patent.

#### **11. PRODUCTS**

Any products, including route maps and timetables, prepared by CONTRACTOR as described in the Scope of Work become the sole property of the COMMISSION upon completion of contract and full payment for services.

#### **12. ATTORNEY'S FEES**

In the event an action is filed by either party to enforce rights under this agreement, the prevailing party shall be entitled to recover a reasonable attorney's fee in addition to any other relief granted by the court.

#### **13. NOTICES**

##### **A. TO THE COMMISSION**

All notices to the COMMISSION under this Agreement shall be in writing and sent to:

Darren M. Kettle,  
Executive Director  
Ventura County Transportation Commission  
950 County Square Drive, Suite 207, Ventura, CA 93003

##### **B. TO THE CONTRACTOR**

All notices to CONTRACTOR under this agreement shall be in writing and sent to:

Ms. Darlene Cochran,  
Vice President and General Manager  
CUSA CC, LLC  
3333 E. 69<sup>th</sup> Street, Long Beach, CA 90805

#### **14. ENTIRE AGREEMENT, MODIFICATION, AND EFFECTIVE DATE**

##### **A. ENTIRE AGREEMENT**

This agreement, together with the "AMENDED AND RESTATED AGREEMENT FY 2009-10, FY 2010-11, FY 2011-12 FOR LEASE OF FULLY MAINTAINED BUSES AND MISCELLANEOUS EQUIPMENT ASSOCIATED WITH VISTA HIGHWAY 101, VISTA HIGHWAY 126, VISTA EAST COUNTY, VISTA CONEJO CONNECTION, VISTA CSUCI,

VISTA COASTAL EXPRESS ROUTES," constitute the entire Agreements between the parties and supersede all agreements and understandings related to this work. Each party to this Agreement acknowledges that no representation, inducements, promises or agreements, orally or otherwise have been made by a party, or anyone acting on behalf of any party, which are not embodied herein or in the above-cited agreements, and that any other agreement, statement or promises not contained in these agreements shall not be valid or binding.

## **B. MODIFICATIONS**

This Agreement may not be altered, amended, or modified except by written instrument signed by the duly authorized representative of both parties.

## **C. EFFECTIVE DATE**

This Agreement shall be effective as of the issuance of a Notice to Proceed from the COMMISSION to CONTRACTOR.

## **15. GOVERNING LAW**

This Agreement shall be governed by and in accordance with the laws of the State of California and The United States of America.

## **16. SERVICES TO BE PERFORMED**

The services to be performed by the CONTRACTOR pursuant to this Agreement: (1) Actual operation (including the provision of equipment as specified in this Contract) and (2) submission of reports and other materials to COMMISSION as specified.

## **17. DESCRIPTION OF TRANSIT SERVICES**

### **A. ROUTE**

This contract is for the services described in Attachment #1, commencing on Wednesday, July 1, 2009.

### **B. DAYS/HOURS OF OPERATION**

VISTA Coastal Express service shall operate all seven days of the week. Conejo Connection service shall be provided Monday through Friday (no weekend service). All other VISTA services shall operate Monday through Saturday (no Sunday service). No service is provided on any of the routes on the official holidays of New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. Details about the services are included in Attachment #1.

COMMISSION reserves the right to make adjustments to the service hours and service areas, pursuant to Section 2, above.

For major adjustments, CONTRACTOR will be notified not less than seven (7) calendar days prior to the effective date; for minor adjustments, contractor will be given at least 24 hours notice.

### **C. FARES**

COMMISSION will determine and set fares. CONTRACTOR shall charge passengers exactly as specified by the COMMISSION, unless notified by COMMISSION that there will be a deviation from regular fares. A description of the fares is included in Attachment #1.

CONTRACTOR'S drivers will collect fares. Fares may be paid by passengers on a single transaction basis (cash or token), or by One-Day pass (Hwy 126 route only) or Smartcard fare card. Additionally, on a weekly basis, CONTRACTOR will deposit fares in a bank account as specified by COMMISSION. The contractor will track the daily revenue collected by the fare type for both cash fares and pre-paid fares (token, Smartcard, One-Day Pass), for each route on a monthly report. (Sample of required format to be provided by VCTC.)

### **D. SERVICE DESCRIPTION**

Details about the service are included in Attachment #1, as it may be modified from time to time pursuant to the terms of Section 2, above.

## **18. PERIOD OF CONTRACT**

### **A. PERIOD AND RATE CONSIDERATIONS**

All services provided in this project by this Agreement shall commence on Wednesday, July 1, 2009 and terminate upon completion of daily service on June 30, 2012. For the second and third years, the COMMISSION may allow an increase in rates based on increased cost of labor, fuel, fuel oil or petroleum products, and/or because of unanticipated regulatory, license, tax or other costs implemented by government agencies. Also, any significant changes in the schedule or route resulting in a major change in the operating hours will be considered.

Any increase in labor costs must be substantiated by the CONTRACTOR. Any increase based on the increases in labor, fuel, oil or other petroleum products must be substantiated by valid purchase orders or other such contracts verifying that such increase is actual, unavoidable and beyond the control of the CONTRACTOR.

The CONTRACTOR shall agree, upon request of the COMMISSION, to submit detailed cost breakdowns in order to permit verification of the request. This request for an increase in proposed fees for the coming fiscal year shall be made no less than ninety (90) days prior to end of the preceding fiscal year.

### **B. OPTION TERM**

Subject to authorization from FTA, the COMMISSION may agree to extend any of the services provided by the CONTRACTOR under this agreement through June 30, 2015. Costs associated with such an extension shall be established by mutual agreement of the parties, based on the following principles:

Such extension shall be at the same rates, terms and conditions as the original term of the contract. Any increase in cost shall be no more than the current cost of living increase as determined by the State of California for the Ventura County/Santa Barbara County areas,

except that the COMMISSION may allow an increase in rates based on increased costs of labor, fuel, oil, or other petroleum products. Any increase in labor costs must be substantiated by a valid contract between the CONTRACTOR and his employees and/or union organization representing CONTRACTOR'S employees. Any increase based on increases in labor, fuel, oil or other petroleum products must be substantiated by valid purchase orders or other such contracts verifying that such increase is actual, unavoidable and beyond the control of the CONTRACTOR.

The CONTRACTOR shall agree, upon request of the COMMISSION to submit detailed cost breakdowns, for the option period(s) in order to permit verification of this request. This request for an increase in proposed fees shall be made no less than forty-five days prior to expiration of the contract.

If wishing to exercise this option, COMMISSION shall serve notice to the CONTRACTOR at least sixty (60) days prior to expiration of this agreement of its wish to extend. Such notice shall not be deemed to commit COMMISSION to such extension.

It is mutually understood and agreed that all work performed and services provided under any exercised option shall be in strict compliance with all requirements of this contract.

Additionally, it is mutually understood and agreed that: (1) COMMISSION is under no obligation to exercise this option; (2) no representation has been made by COMMISSION committing it to exercise this option; and (3) COMMISSION may decline to accept the option and secure services elsewhere. Such option may be exercised by amendment hereto or by issuance of a new agreement signed by the parties hereto.

## **19. CONTRACTOR PROJECT RESPONSIBILITIES**

### **A. OPERATION OF TRANSPORTATION SERVICE**

The public transportation services included in this Contract are described in Attachment #1. The CONTRACTOR shall be responsible for operations of these services as specified in Attachment #1. All transportation services shall be provided according to the information in this Contract for service.

The CONTRACTOR shall be responsible for operation of public transportation services pursuant to the terms, conditions, and requirements stated herein. In the conduct of this task, the CONTRACTOR shall ensure at all times that vehicles used for passenger conveyance shall be operated with due regard for the safety, comfort, and convenience of the general public. The CONTRACTOR will be responsible for complying with all applicable federal, state and local laws and requirements.

The CONTRACTOR shall be responsible for ensuring compliance with the Americans With Disabilities Act (ADA), Part IV, 49 CFR Parts 27, 37, and 38: Transportation for individuals with disabilities, Final Rule, dated September 6, 1991.

The CONTRACTOR shall be responsible for establishing and maintaining a driver, vehicle and passenger safety program throughout the life of this contract.

Transportation services shall be provided pursuant to the service descriptions contained in Attachment #1 of this document or any adjusted schedule established by COMMISSION including service modifications required as a result of a declared emergency.

Adherence to service plans and timetables is absolutely essential. However, the CONTRACTOR shall not be held responsible for failure to provide on-time service due to external conditions over which the CONTRACTOR has no control, e.g., severe weather or extraordinary traffic conditions that preclude scheduled performance.

For purposes of performance evaluation, on-time performance is defined as follows:

- 1) A fixed route vehicle shall depart at a time point between zero minutes before and five minutes after the scheduled departure time.
- 2) Adequate back up vehicles for all services should be available to be dispatched within 20 minutes of the time when the original vehicle was scheduled.

The CONTRACTOR shall be responsible for ensuring that all scheduled trips are operated in their entirety. Any scheduled trip, or portion thereof, which is not operated pursuant to the schedule, shall be reported to COMMISSION as a missed trip.

CONTRACTOR shall average a 90% on-time performance record for each quarter of operation. CONTRACTOR shall, at a minimum, complete 99% of all scheduled trips during every quarter of operation.

## **B. BUS OPERATOR PERSONNEL STANDARDS**

The CONTRACTOR shall ensure that regularly assigned drivers or back-up personnel are available and on time each day to ensure consistent and reliable service. All personnel must be familiar with the contracted services, and also with the services with which they connect, in order to provide accurate information to passengers.

### **1. Uniforms**

The CONTRACTOR shall ensure that drivers wear appropriate uniforms at all times which identify them as employees of the CONTRACTOR. Drivers shall be required to maintain a clean and neat appearance.

Each vehicle operator shall have an accurate time piece available and in clear sight at all times during vehicle operation.

CONTRACTOR shall ensure that all drivers meet the following dress code when operating a vehicle in VISTA service:

- Uniform shirts: Clean and neatly pressed, free of spots and smudges, with logo provided by CONTRACTOR.
- Trousers/slacks: Clean and neatly pressed, free of spots and smudges.

- Shoes: Kept in good repair and, if leather, polished. Shoes shall be of such nature as to permit the driver to operate the vehicle safely.

## **2. Training**

The CONTRACTOR shall provide all drivers with training programs which meet State of California, Department of Motor Vehicles (DMV) requirements. Such programs shall include, but not be limited to, the following: safe vehicle operating techniques; defensive driving; passenger relations; accommodation of disabled passengers; schedule and schedule adherence; appropriate conduct during emergency situations, and, illness and injury prevention.

Drivers must be trained on actual service operation before the first day of service.

The CONTRACTOR shall review a current Department of Motor Vehicle (DMV) report on all applicants for vehicle operator and shall reject any applicant with one or more moving violations within the past two years or with any failure to appear in court for driving under the influence.

CONTRACTOR shall join the California DMV Pull Notice Program, whereby the CONTRACTOR shall be notified of any activity on a transit vehicle operator's driving record. Any operator exceeding the California DMV point system or with a revoked or suspended license will not be allowed to operate a transit vehicle. Also, COMMISSION reserves the right to request CONTRACTOR replace any driver not acceptable to COMMISSION.

## **3. Licensing**

All drivers shall be required to have valid California licenses of the appropriate class for operation of the vehicles to which they are assigned. All drivers must also have in their possession at all times when operating a vehicle in COMMISSION service, a valid California Department of Motor Vehicles (DMV) Medical Examiner's Certificate. The CONTRACTOR shall be responsible for monitoring Department of Motor Vehicle records for drivers to ensure their continued qualification and suitability for public transit vehicle operation.

## **4. Medical/Drug Testing**

The CONTRACTOR shall require pre-employment medical examinations, including drug and alcohol testing, for all prospective drivers and other safety sensitive employees of the CONTRACTOR. Any person who has not successfully passed such an examination shall not be permitted to operate or maintain a vehicle in any service performed under contract to COMMISSION. Additionally, the CONTRACTOR must have an anti-drug program established for employees pursuant to federal rules described in Parts 653 and 654 of title 29 of the Code of Federal Regulations. The required anti-drug program would include, testing in the following situations in addition to the pre-employment testing, reasonable suspicion, random, post-accident, and return to duty/follow-up.

## **C. SMARTCARD PROGRAM**

The CONTRACTOR shall cooperate in the Smartcard fare card program, including making the Smartcard equipment (on-bus, garage, and sales outlet) accessible to the Smartcard contractor for repairs, upgrades, data extraction, etc., as necessary. The CONTRACTOR

shall require its drivers to properly "logon" the Smartcard equipment, including the appropriate route designation, and to report to the supervisor any Smartcard problems experienced either during the driver's pre-trip inspection or while the bus is in service. The CONTRACTOR shall provide VCTC with a Smartcard Defect report (form provided by VCTC) on a daily basis or as applicable. The CONTRACTOR shall ensure that the Smartcard data is downloaded from the buses on a daily basis.

#### **D. RECORD KEEPING AND REPORTING**

##### **1. Financial Records/Audits/Inspection**

The CONTRACTOR shall establish and maintain within a separate account all project expenditures and any other relevant financial records or documents. The CONTRACTOR shall submit invoices to the Ventura County Transportation Commission (the Agency responsible for administration of the VISTA operations) within five working days after the end of each month for services rendered during the reporting period. Invoices shall be prepared in such a form and supported by such documentation as may be required by COMMISSION to establish that the amounts are allowable. Payment to CONTRACTOR shall be made within thirty (30) days after receipt of an acceptable invoice. All invoices shall be addressed as follows:

Executive Director  
Ventura County Transportation Commission  
950 County Square Drive, Suite 207  
Ventura, CA 93003

All invoices, supporting documents, and other financial records relevant to this contract shall be subject to inspection and audit by representatives of COMMISSION, the United States Department of Transportation (DOT), and Controller General of the United States.

If at any time during the term of the contract, or for three years after its expiration or termination, authorized representatives of COMMISSION conduct an audit of the CONTRACTOR regarding the services provided under the contract, and if such audit finds that COMMISSION's dollar liability for such services is less than payments made by COMMISSION to the CONTRACTOR, then the CONTRACTOR shall agree that the difference shall be either: 1) repaid by the CONTRACTOR to COMMISSION by cash payment, or 2) at COMMISSION's option, credited against any future payments hereunder to the CONTRACTOR.

If such audit finds that COMMISSION's dollar liability for services provided is greater than payments made by COMMISSION to the CONTRACTOR then the difference shall be paid to the CONTRACTOR by COMMISSION by cash payment, provided that in no event shall COMMISSION's maximum obligation for the contract, as set forth in this Contract, be exceeded, unless authorized in writing by COMMISSION.

##### **2. Passenger and Service Operation Records**

The CONTRACTOR shall be required to maintain records of schedule adherence as requested by COMMISSION. This function shall be performed by CONTRACTOR's personnel on a monthly basis and submitted to the COMMISSION.



The CONTRACTOR also shall be responsible for submission of monthly service summary reports to COMMISSION. These reports, to be submitted by the CONTRACTOR within five working days after the end of each calendar month, shall include, but not be limited to, the following:

- a) Listing of all vehicle breakdowns occurring in service, with a description of the cause and corrective actions taken;
- b) Listing of all scheduled trips (or portions thereof) missed, with explanations therefore;
- c) Listing of passenger boardings by all fare types. (Sample of required format to be provided by VCTC.)
- d) Additionally, COMMISSION representatives will occasionally board the CONTRACTOR's vehicles to record passenger activity per stop, as part of COMMISSION's data gathering activities for FTA National Transit Database reporting requirements, or for other projects as determined by COMMISSION.

### **3. Smartcard Records**

The CONTRACTOR shall cooperate in monitoring the operation of the Smartcard on-bus equipment (driver unit, passenger unit, and card reader). In addition to the daily defect report required under Section C above, CONTRACTOR will provide weekly reports to VCTC as to the date the Smartcard contractor was notified of such malfunctions, and when the problem was resolved.

### **4. Complaints Record**

The CONTRACTOR shall also respond to all complaints received by its office or by VCTC staff and forwarded to the operator by noting the name of the operator (if it can be ascertained by the information provided in the complaint), a summary of the supervisor's discussion with the operator, and the operator's response. This information will be provided on the complaint form and will be forwarded to VCTC within 5 working days of receipt of complaint. The information related to the name and address of the person filing the complaint will remain confidential between the VCTC and CONTRACTOR.

### **5. Provision of Information about CONTRACTOR'S Employees**

CONTRACTOR agrees to comply with California labor code section 1072 (c) (1) "If the awarding authority announces that it intends to let a service contract out to bid, the existing service contractor, within a reasonable time, shall provide to the awarding authority the number of employees who are performing services under the service contract and the wage rates, benefits, and job classifications of those employees. In addition, the existing service contractor shall make this information available to any entity that the awarding authority has identified as a bona-fide bidder. If the successor service contract is awarded to a new contractor, the existing contractor shall provide the names, addresses, dates of hire, wages, benefit levels, and job classifications of employees to the successor contractor."

**E. DISPATCHING OF OPERATORS**

Operators shall travel according to the dispatch information included in Attachment #1. All operators shall have radio contact with each other and the dispatch center while in vehicles, using standard radio equipment and frequencies.

**F. DESIGNATION OF PROJECT MANAGER**

Management of the day-to-day operations of services performed under contract to COMMISSION shall be vested in a Project Manager, who shall be an experienced employee of the CONTRACTOR. The Project Manager shall function as the primary contact person for the service(s), and shall be knowledgeable in all areas of the project. The Project Manager shall be subject to approval by COMMISSION.

In addition, a responsible senior employee of the CONTRACTOR shall be available at all times during the hours in which services are operated to make decisions or provide assistance as requested by COMMISSION.

**G. FAILURE TO PERFORM – LIQUIDATED DAMAGES**

COMMISSION shall assess liquidated damages against the CONTRACTOR for failure to perform in accordance with COMMISSION's service objectives. The liquidated damages are not a penalty, but are the parties' best estimates of damages suffered by COMMISSION resulting from the following failures to perform, which cannot be ascertained with certainty at the inception of the contract.

1. Two (2) or more documented instances of failure to provide ridership and trip sheets as required within any monthly accounting period.
2. Failure to meet the "on time" performance standards (90%) during any monthly service period.
3. Failure to meet the scheduled trip standard (99%) during any monthly service period.

The following liquidated damages shall be applied:

1. Forfeiture of payment for two days worth of service hours per route per revenue vehicle for the first violation of any service objective (Items 1-3 above).
2. Forfeiture of payment for five days worth of service hours per route per revenue vehicle for the second and third violation of any service objective (Items 1-3).

In addition, COMMISSION reserves the right to impose:

Cancellation of contract for cause for the fourth violation of any service objective (Items 1-3 above).

If the CONTRACTOR receives an unsatisfactory terminal rating from the CHP, the CONTRACTOR is expected to correct the deficiencies within 60 days. The CONTRACTOR is expected to operate in the safest possible manner, including operating only road ready equipment.

## **H.     MARKETING/COMMISSION PROMOTIONS**

The CONTRACTOR will participate as needed in any appropriate COMMISSION marketing or promotional activities intended to increase public awareness and ridership.

### **20.     ARBITRATION**

Claims and disputes arising under or related to the performance of the contract shall be resolved by arbitration unless the COMMISSION and the CONTRACTOR agree in writing, after the claim or dispute has arisen, to waive arbitration and to have the claim or dispute litigated in a court of competent jurisdiction. Arbitration shall be pursuant to Chapter 3 (Sections 301-393, inclusive) of Division 2 of Title 1 of the California Code of Regulations except that references therein to the "State Contract Act" shall be construed to mean "COMMISSION." (Pursuant to Section 301 of Division 2 of Title 1 of the California Code of Regulations, "Arbitrations" means the proceeding for resolving claims pursuant to Sections 10240 through 10245.4 of the Public Contract Code). The arbitration decision shall be decided under and in accordance with California law, supported by substantial evidence and, in writing, contain the basis for the decision, findings of fact, and conclusions of law.

Arbitration shall be initiated by a Demand for Arbitration made in compliance with the requirements of said Chapter 3. A Demand for Arbitration by the CONTRACTOR shall be made not later than 180 calendar days after receipt of the final written decision of the COMMISSION on the claim or dispute or within 240 days after acceptance of the Contract by the COMMISSION if no written decision has been issued.

Where an election is made by either party to use the Simplified Claims Procedure provided under sections 375-381 of Division 2 Title 1 of the California Code of Regulations, the Parties may mutually agree to waive representation by counsel.

### **21.     DELIVERY**

In case the commencement of service shall be necessarily delayed because of strike, injunctions, government controls, or by reason of any cause or circumstance beyond the control of the CONTRACTOR, the time of completion of delivery shall be extended a number of days to be determined in each instance by mutual agreement between the CONTRACTOR and COMMISSION.

### **22.     PAYMENT**

COMMISSION will make payment to CONTRACTOR upon receipt of valid invoice, based on the services delivered during the period preceding the billing. Payment will be made on a per revenue vehicle service hour basis.

Payments shall be made within thirty (30) days after CONTRACTOR submits valid invoice for services rendered. The invoice shall be submitted by the 5<sup>th</sup> business day of the month, and will reflect the billing for services rendered. The invoice will include, for each route, as an attachment, a copy of the record verifying fares collected and deposited, a copy of the monthly ridership report, total hours per day, total weekdays and Saturdays of operation, total operating cost and total maintenance and capital cost, Smart Card sales report, total

number of tokens collected, if any, and total number of miles. (Sample of required format to be provided by VCTC.)

### **23. INTEREST OF EMPLOYEES**

No member officer or employee of COMMISSION, during his/her tenure or for one (1) year thereafter, shall have any interest, direct or indirect, in this Contract or the proceeds thereof.

To each party's knowledge, no Commissioner, officer, or employee of COMMISSION has any interest, whether contractual, non-contractual, financial or otherwise, in this transaction, or in the business of the contracting party other than COMMISSION, and if any such interest comes to the knowledge of either party at any time, a full and complete disclosure of all such information will be made in writing to the other party or parties, even if such interest would not be considered a conflict of interest under Article 4 (commencing with Section 1090) or Article 4.6 (commencing with Section 1120) of Division 4 of Title 1 of the Government Code of the State of California.

### **24. AIR POLLUTION CONTROL**

The CONTRACTOR shall comply with all air pollution control rules, regulations, ordinances and statutes which apply to any work performed pursuant to the Contract, including any air pollution control rules, regulations, ordinances and statutes, specified in Section 11017 of the California Government Code. All CONTRACTORS and suppliers shall be required to submit evidence, if requested, to COMMISSION that the governing air pollution control criteria will be met.

### **25. EQUAL EMPLOYMENT OPPORTUNITY**

a.) In connection with the execution of this Contract, the CONTRACTOR shall not discriminate against any employee or applicant for employment because of age, religion, color, sex, national origin, marital status, or any handicap not limiting the ability of the person to perform the job contemplated. The CONTRACTOR shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, sexual orientation, national origin, marital status, or any disability not limiting the ability of the person to perform the job contemplated. Such actions shall include, but not be limited to the following: Employment, up-grading, demotion, or transfer; recruitment, or recruitment advertising; layoff, or termination; rates of pay, or other forms of compensation; and selection for training, including apprenticeship. Such shall be in compliance with Executive Order 11246 amended by Executive Order 11375 and as supplemented in Department of Labor regulations (41 CFR, Part 60)

b.) In connection with the execution of this Contract, the CONTRACTOR must comply with all aspects of the federal Immigration and Naturalization Act 1986.

### **26. OWNERSHIP OF REPORTS AND DOCUMENTS**

Originals of all documents pertaining to the work performed under this agreement shall become the property of COMMISSION. Copies may be made for the CONTRACTOR's

records but shall not be furnished to others without prior written authorization from COMMISSION.

**27. RECORD RETENTION**

The CONTRACTOR agrees to retain intact and to provide any data, documents, reports, records, contracts, and supporting materials related to the project for three years from mutually accepted completion of the services rendered under this Agreement.

**28. ASSIGNMENT**

Neither COMMISSION nor CONTRACTOR shall assign its interest in this agreement without prior consent of the other party.

**29. TITLE VI OF THE CIVIL RIGHTS ACT 1964**

During the performance of this contract, the CONTRACTOR, for itself, its assignees and successors in interest (hereinafter referred to as the "CONTRACTOR") agrees as follows:

**A. COMPLIANCE WITH REGULATIONS**

The CONTRACTOR shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

**B. NONDISCRIMINATION**

In addition to Paragraph 25 above, the CONTRACTOR, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The CONTRACTOR shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in the Regulations. The proposal should include a statement by the CONTRACTOR certifying its compliance with the Regulations.

**C. SOLICITATIONS FOR SUBCONTRACTORS, INCLUDING PROCUREMENT OF MATERIALS AND EQUIPMENT**

In all solicitations either by competitive bidding or negotiation made by the CONTRACTOR for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the CONTRACTOR of the CONTRACTOR's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

**D. INFORMATION AND REPORTS**

The CONTRACTOR shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, accounts, other sources of information and its facilities as may be determined by COMMISSION or the Federal Transportation Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, the CONTRACTOR shall so certify to COMMISSION or the Federal Transportation Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

**E. SANCTIONS FOR NONCOMPLIANCE**

In the event of the CONTRACTOR's noncompliance with nondiscrimination provisions of this contract, COMMISSION shall impose contract sanctions as it or the Federal Transportation Administration may determine to be appropriate, including, but not limited to:

1. withholding of payments to the CONTRACTOR under the contract until the CONTRACTOR complies; and/or
2. cancellation, termination, or suspension of the contract, in whole or in part.

**F. INCORPORATION OF PROVISIONS**

The CONTRACTOR shall include the provisions of paragraphs "A" through "F" in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The CONTRACTOR shall take such action with respect to any subcontract or procurement as COMMISSION or the Federal Transportation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: provided, however, that, in the event a CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the CONTRACTOR may request COMMISSION, and in addition, the CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

**30. LABOR PROVISIONS****A. OVERTIME REQUIREMENTS**

CONTRACTOR must comply with all federal and state labor laws and regulations.

**B. RECORDS**

The CONTRACTOR or SUBCONTRACTOR shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, COMMISSION shall require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the CONTRACTOR or SUBCONTRACTOR for inspection, copying, or transcription by authorized representatives of the DOT and the Department of Labor, and the CONTRACTOR or SUBCONTRACTOR will permit such representatives to interview employees during working hours on the job.

**31. ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES**

The CONTRACTOR agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101 et seq. and 49 U.S.C. 322; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794; Section 16 of the Federal Transit Act, as amended, 49 U.S.C. app. 1612; and regulations and any amendments thereto.

**32. AUDIT AND INSPECTION**

The CONTRACTOR agrees to permit the COMMISSION, or its authorized representative, to inspect all project work, materials, payrolls, and other data and records involving the contract, and to audit the books, records, and accounts involving the contract as it affects the Project.

**33. CONTRACTS INVOLVING FEDERAL PRIVACY ACT REQUIREMENTS**

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

- (1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements for the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
- (2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.
- (3) The Contractor agrees to the comply with applicable transit employee protective requirements as follows:

- (a) General Transit Employee Protective Requirements – To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection, however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for non-urbanized areas authorized by 49 U.S.C. §5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.
- (b) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities – If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body sub recipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth in Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.
- (c) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Non-urbanized Areas – If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the contractor agrees to comply with the terms and conditions of the Special Warranty for the Non-urbanized area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.
- (4) The contractor also agrees to include any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.



### **34. CONTRACT PROVISIONS**

#### **A. TERMINATION**

##### **1. Termination for Convenience of COMMISSION**

This agreement may be terminated by the COMMISSION at any time upon sixty (60) days written notice to CONTRACTOR. In full discharge of any obligation to CONTRACTOR in respect of this Agreement and such termination, the COMMISSION shall pay for the costs and non-cancelable commitments incurred prior to the date of termination costs. In no event, however, shall the COMMISSION be obligated to pay CONTRACTOR any amount in excess of the total funds committed for this project by the COMMISSION.

Upon the effective date of the written notice of termination, the CONTRACTOR shall cease performance of services to the extent specified in the notice. COMMISSION shall pay the CONTRACTOR allowable costs incurred.

##### **2. Termination for Default**

Subject to the provisions below, COMMISSION may, by written notice of default to the CONTRACTOR, terminate this contract in whole or in part if the CONTRACTOR fails to perform the transportation services described herein within the time and in the manner specified in this contract or any extension thereof, or fails to perform any of the other provisions of this contract.

COMMISSION's right to terminate this contract may be exercised if the CONTRACTOR does not cure the condition(s) constituting default within ten (10) calendar days after receipt of written notice from COMMISSION specifying the failure.

##### **3. CONTRACTOR Liability for Excess Costs**

If COMMISSION terminates this contract in whole or in part due to the default of the CONTRACTOR as described above, it may acquire, under terms and in the manner COMMISSION considers appropriate, services similar to those terminated, and the CONTRACTOR shall be liable to COMMISSION for any excess costs for those services.

##### **4. CONTRACTOR Liability for Excess Costs in the Event of Default due to Circumstances Beyond Its Control**

Except for default of SUBCONTRACTORS at any tier, the CONTRACTOR shall not be liable for any excess costs if the failure to perform contract services arises from causes beyond the control and without the fault or negligence of the CONTRACTOR. Examples of such causes include: acts of God; natural disasters; quarantine restrictions, or; unusually severe weather, as they may effect the direct operation of transit service in the area wherein CONTRACTOR service is proposed. In each instance, the failure to perform must be beyond the control and without the negligence of the CONTRACTOR.

##### **5. Payment for Conforming Services**

Upon termination of this contract due to CONTRACTOR default as described herein, COMMISSION shall pay the CONTRACTOR for conforming services actually provided to date of termination, less previous payments.

#### **6. Termination by the CONTRACTOR**

The CONTRACTOR shall have the right to terminate this contract upon the provision of ninety (90) days written notice to COMMISSION. In the event of such termination by the CONTRACTOR, COMMISSION shall pay the CONTRACTOR for conforming services actually provided to the effective date of termination, less previous payments. All finished and unfinished documents, records, and reports relating to services provided under this contract shall become the property of COMMISSION.

### **B. DISPUTES AND CLAIMS; PROCEDURE**

- 1) **GENERAL.** Any and all decisions made on appeal pursuant to this Subsection shall be in writing. Any "decision" purportedly made pursuant to this Subsection which is not in writing shall not be binding upon the COMMISSION and should not be relied upon by the CONTRACTOR.

Filing or giving written notice to the COMMISSION within ten (10) calendar days of the origin of a claim is prerequisite to recovery under a CONTRACTOR's claim for additional compensation; nothing in this subsection shall excuse CONTRACTOR from his duty to file or give the required notices, or from performing other duties required by the contract Documents.

- 2) **ADMINISTRATIVE REVIEW.** Prior to demand for arbitration, the CONTRACTOR shall exhaust his administrative remedies by attempting to resolve the dispute or claim with COMMISSION's staff.

The VCTC Executive Director shall address disputes or claims within twenty-eight (28) calendar days after receiving such request and all necessary supporting data. The Director's decision on the dispute or claim shall be the COMMISSION's final decision.

Requests for review made to the COMMISSION's staff may be either oral or written. Requests for review made to the VCTC Executive Director shall be made in writing with supporting evidence attached.

Each request for review shall be submitted by the CONTRACTOR within twenty-one (21) calendar days of receipt of the decision to be reviewed.

**35. SIGNATURES**

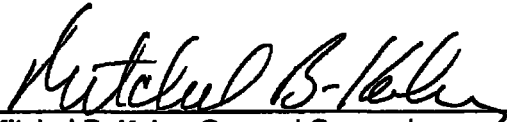
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives. Each party represents to the other party that this agreement has been executed by a duly authorized agent of the party so representing.

**COMMISSION:****VENTURA COUNTY TRANSPORTATION  
COMMISSION**

By

  
KATHY LONG, Chairperson**CONTRACTOR:****CUSA CC, LLC**

By

  
DARLENE COCHRAN, Vice President/  
General Manager**ATTEST:**  
Clerk of the Commission**APPROVED AS TO FORM:**  
Mitchel B. Kahn, General Counsel  
Commission**APPROVED AS TO CONTENT:**  
Darren Kettle, Executive Director  
Commission

**Attachment #1****SCOPE OF WORK  
ROUTE AND SERVICE DESCRIPTION****VISTA HIGHWAY 101**

The following is a general description of the VISTA-HWY 101 service.

The route is an intercity, fixed route, express bus service along the Highway 101 corridor in Ventura County. The route includes stops at: Thousand Oaks Transit Center (Rancho Road), Oaks Mall and the Conejo Industrial Park in Thousand Oaks; Pardee Plaza, Leisure Village, Camarillo Metrolink Station, Camarillo Premium Outlets, and Carmen Plaza in Camarillo; the Esplanade Mall in Oxnard; the County Government Center, Ventura College, County Medical Center, St. Bonaventure High School, Ventura Pier, and the Pacific View Mall in Ventura.

On weekdays service will operate between approximately 6 am and 8 PM. In the morning and afternoon peak hours, regular buses will run on approximately 60-70 minute headways. In the off-peak hours, the headways will be approximately 120 minutes. The peak hours will be defined in the final schedule, but it will be a minimum of three hours in the morning and three hours in the afternoon.

Saturday service will operate between approximately 7 AM and 7 PM. In the morning and evening peak hours, the buses will run on approximately 60-70 minute headways. In the off-peak hours, the headways will be approximately 120 minutes. The peak hours will be defined in the final schedule, but it will be a minimum of three hours in the morning and three hours in the afternoon.

The schedule will be arranged to provide timed transfers to: Thousand Oaks Transit and the VISTA-EAST service in Thousand Oaks; Camarillo Area Transit in Camarillo; South Coast Area Transit (SCAT), the VISTA-HWY 126 and VISTA Coastal Express services in Ventura, as feasible.

**VISTA Hwy 126 Service**

The VISTA Hwy 126 service is an intercity, fixed route, express bus service along the State Route 126 corridor between Fillmore, Santa Paula and San Buenaventura. The route includes stops at: Fillmore Senior Center in Fillmore; Santa Paula City Hall and K-Mart Park and Ride in Santa Paula; and Wells Center, County Government Center, Ventura College, St. Bonaventure High School, the County Medical Center, Ventura Pier and the Pacific View Mall in Ventura.

On weekdays service will operate between approximately 6 am and 8 PM. In the morning and afternoon peak hours, regular buses will run on approximately 60-70 minute headways. Morning service will be supplemented with a third bus. In the off-peak hours, the headways may increase to approximately 120 minutes. The peak hours will be defined in the final schedule, but it will be a minimum of three hours in the morning and three hours in the afternoon.

Saturday and Sunday service will operate between approximately 8 AM and 6 PM. In the morning and evening peak hours, the buses will run on approximately 60-70 minute headways. In the off-peak hours, the headways may increase to approximately 120 minutes. The peak hours will be defined in the final schedule, but it will be a minimum of three hours in the morning and three hours in the afternoon.

The schedule will be arranged to provide timed transfers to local and intercounty transit providers such as Santa Paula and Fillmore Dial-a-Rides, the VISTA 101, VISTA Coastal Express, VISTA Conejo Connection and SCAT, as feasible.

### **VISTA East County Service**

The following is a general description of the VISTA-EAST COUNTY service.

The route is an intercity, fixed route, express bus service in eastern Ventura County with connections to adjacent Los Angeles County. The route includes stops at: Thousand Oaks Transit Center (Rancho Road), Oaks Mall, Westlake Boulevard/Townsgate Road and the Thousand Oaks Library in Thousand Oaks; Moorpark College, Princeton/Amherst and the Moorpark Metrolink Station in Moorpark; and the Simi Town Center in Simi Valley;

On weekdays service will operate between approximately 6 am and 7 PM. In the morning and evening peak hours, the buses will run on approximately 60-minute headways. In the off-peak hours, the headways may increase to approximately 120 minutes. The peak hours will be a maximum of three hours in the morning and three hours in the afternoon.

Saturday service will operate between approximately 7 AM and 6 PM. The buses will run on approximately 60-minute headways. In the off-peak hours, the headways may increase to approximately 120 minutes. The peak hours will be defined in the final schedule, but it will be a minimum of three hours in the morning and three hours in the afternoon.

The schedule will be arranged to provide timed transfers with local and intercounty transit providers such as the Simi Valley Transit (which provides connecting access to the Simi Metrolink Station); Thousand Oaks Transit, the VISTA-101 service, Moorpark Transit, and Los Angeles MTA as feasible.

### **VISTA-CONEJO CONNECTION**

This route provides intercity, fixed route commuter express bus service between Ventura County and the Warner Center in Los Angeles County. The route will include stops at the Oxnard Transportation Center and Oxnard Esplanade in Oxnard, the Las Posas Park & Ride Lot in Camarillo; Wendy Drive/Hillcrest and Rancho Road Park & Ride Lot in Thousand Oaks; and several stops within the Warner Center in Woodland Hills. In addition, morning northbound and afternoon southbound trips may include one or more of the following stops: Pacific View Mall in Ventura; Carmen Plaza, Camarillo Metrolink and Pardee Plaza in Camarillo; Westlake Townsgate in Thousand Oaks.

Service will consist of two roundtrips in the morning and two roundtrips in the afternoon/evening. Service will operate between approximately 6 AM and 11 AM and between approximately 2:30 PM and 6:30 PM weekdays. In the morning and evening commute hours, buses will have approximately 30 minute headways.

**VISTA - CSUCI/CAMARILLO METROLINK STATION**

This route provides express bus service between the Camarillo Metrolink Station and the CSU-Channel Islands campus in Camarillo. Service will operate Monday-Friday between 7:00 a.m. and 10:30 p.m. and Saturday between 7:30 am and 5:30 pm. Weekday service will operate from the Metrolink Station every 15-minute during peak hours (3 p.m. to 10:30 p.m.) and every 30 minutes during non-peak. Saturday service will be every 30 minutes throughout the hours of service. The service will coordinate with local services, including the VISTA 101 service in Camarillo, the Camarillo Dial A Ride service and the rail services at the Camarillo Metrolink Station.

**VISTA - CSUCI/OXNARD "C" STREET TRANSFER CENTER**

This service provides express bus service between the "C" Street Center in Oxnard and the CSUCI-Channel Islands campus in Camarillo. Service will operate Monday-Friday between 7:00 a.m. and 10:55 p.m., and Saturday between 7:00 p.m. and 5:55 p.m. This service will coordinate with SCAT buses in Oxnard. Service will run every 60 minutes throughout the day, Monday-Saturday.

**VISTA – COASTAL EXPRESS****A. Service Description**

This intercounty express fixed route service operates between the city of San Buenaventura in Ventura County and the cities of Carpinteria and Santa Barbara in Santa Barbara County. During weekday peak-hours, service will be extended to the University of California Santa Barbara (UCSB) and the City of Goleta in Santa Barbara County. During peak hours some morning northbound buses and some afternoon southbound buses will include a stop in the City of Oxnard. Service will operate during the hours shown in section B.

The areas served by this route are: the City of San Buenaventura- three stops, Santa Barbara - five stops, in the City of Carpinteria- two stops, and during weekday peak-hours, in the City of Goleta 6 stops, UCSB (1 stop) and the City of Oxnard (1 stop).

**B. Days/Hours of Operation**

The intercounty express service will be provided seven days per week. No service is provided on New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. Details about the services are listed below:

<u>Route</u>	<u>Hours of Operation</u>	<u># Buses</u>	<u>Bus Headway</u>
<b>Intercounty Express Bus</b>	5:30 a.m. - 9:00 a.m. and 4:00 PM – 7:00 PM Monday through Friday (During peak hours, service will extend to UCSB and Goleta.)	7	30-90 min
	9:00 a.m. – 3:30 p.m. Monday through Friday	2	60-90 min

(Service to/from downtown Santa Barbara)

3:30 AM – 7:30 PM.                      7                      60-90 min  
 Saturday and Sunday  
 (Service to/from downtown Santa Barbara)

### **FARES FOR IN-COUNTY SERVICE**

VISTA-HWY 101, 126, East County, and CSUCI services- one-way passenger fares are: \$1 for adults between 21 and 61 years of age; \$1 for youth 6 to 20 years; and 50 cents for seniors aged 62 and older and for persons with disabilities. Children 5 and under ride free if accompanied by fare a paying adult.

The SmartCard Passport fares are: adults \$40; youth \$40; seniors and persons with disabilities \$20. Purchased monthly, this passport is valid for unlimited trips on all Ventura County fixed-route public bus systems (not including inter-county service). A cash debit feature is also available.

For an additional 50 cents per trip, holders of the base pass may use the Dial-A-Rides, except on systems where this offer is not valid.

### **FARES FOR CONEJO CONNECTION AND COASTAL EXPRESS**

In County Passengers on Conejo Connection and Coastal Express- For passengers riding Conejo Connection or Coastal Express only within Ventura County, fares shall be the same as for other in-county routes (see above).

Cash Fares: \$2.00 for riders between 5 and 61 years of age and \$1.00 for seniors aged 62 years and older, and persons with disabilities. Children under 5 years of age ride free if accompanied by fare paying adult. Exact change is required.

SmartCard Passport Fares: Age 5 through 61- \$75; seniors and persons with disabilities \$35. Purchased monthly, this passport is valid for unlimited trips on all Ventura County fixed-route public bus systems. The cash debit feature is sold in \$10 increments. ....  
 CONTRACTOR'S drivers will recharge the SmartCard on the buses, using the SmartCard equipment provided by VCTC.

Token Program: Purchased by social service agencies to be used on VISTA services only. Social service agencies provide clients with tokens which are then used as payment for bus rides. The tokens are reimbursed by VCTC at \$1 per token to the VISTA service operators, and two tokens are required for each full-fare passenger for each trip on Conejo Connection and Coastal Express.

### **ADDITIONAL CONTRACTOR ASSIGNMENT**

CONTRACTOR agrees to replace schedule signs at bus stops and repair/replace damaged "ride guide" sign holders, when schedules are modified. COMMISSION agrees to provide CONTRACTOR with at least two weeks notice prior to initiation of this work, and CONTRACTOR agrees to accomplish this work within 1 week of the dates requested by COMMISSION.

**Attachment #2****SERVICE HOURS AND COMPENSATION**

Pursuant to Section 4 of the Agreement, the maximum compensation payable to CONTRACTOR for operating the services described in this agreement shall be as follows: . . . . .

Effective date: commencing July 1, 2009 (until revised by agreement of Executive Director of COMMISSION and General Manager of CONTRACTOR)

**VISTA HIGHWAY 101**

	2009- 2010	2010- 2011	2011- 2012
Weekdays	256	258	257
Saturdays	51	50	53
Hours per weekday	26.22	26.22	26.22
Hours per Saturday	19.53	19.53	19.53
Total Hours	7708.35	7741.26	7773.63
Operating Cost per hour	\$ 37.05	\$ 38.35	\$ 39.69
Yearly Cost not to exceed	\$ 285,594.37	\$ 296,877.32	\$ 308,535.37

**VISTA HIGHWAY 126**

	2009- 2010	2010- 2011	2011- 2012
Weekdays	256	258	257
Saturdays plus Sundays	103	101	103
Hours per weekday	25.15	25.15	25.15
Hours per Saturday	18.67	18.67	18.67
Total Hours	8361.41	8374.37	8386.56
Operating Cost per hour	\$ 37.05	\$ 38.35	\$ 39.69
Yearly Cost not to exceed	\$ 309,790.24	\$ 321,157.09	\$ 332,862.57

**VISTA EAST COUNTY**

	2009- 2010	2010- 2011	2011- 2012
Weekdays	256	258	257
Saturdays	51	50	53
Hours per weekday	22.47	22.47	22.47
Hours per Saturday	15.43	15.43	15.43
Total Hours	6539.25	6568.76	6592.58
Operating Cost per hour	\$ 37.05	\$ 38.35	\$ 39.69
Yearly Cost not to exceed	\$ 242,279.21	\$ 251,911.95	\$ 261,659.50



VISTA CONEJO CONNECTION

	2009- 2010	2010- 2011	2011- 2012
Weekdays	256	258	257
Saturdays	NA	NA	NA
Hours per weekday	13.3	13.3	13.3
Total Hours	3404.8	3431.4	3418.1
Operating Cost per hour	\$ 37.05	\$ 38.35	\$ 39.69
Yearly Cost not to exceed	\$ 126,147.84	\$ 131,594.19	\$ 135,664.39

VISTA COASTAL EXPRESS

	2009- 2010	2010- 2011	2011- 2012
Weekdays	256	258	257
Saturdays	51	50	53
Sundays	52	51	50
Hours per weekday	52.72	52.72	52.72
Hours per Saturday	20.92	20.92	20.92
Hours per Sunday	20.37	20.37	20.37
Total Hours	15622.48	15686.63	15676.3
Operating Cost per hour	\$ 37.05	\$ 38.35	\$ 39.69
Yearly Cost not to exceed	\$ 578,812.88	\$ 601,582.26	\$ 622,192.35

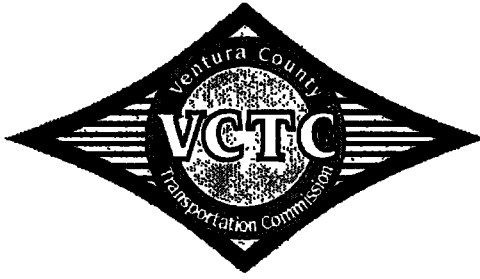
VISTA CSUCI Camarillo Metrolink

	2009- 2010	2010- 2011	2011- 2012
Weekdays	256	258	257
Saturdays	51	50	53
Hours per weekday	18.75	18.75	18.75
Hours per Saturday	8.33	8.33	8.33
Total Hours	5224.83	5254	5260.24
Operating Cost per hour	\$ 37.05	\$ 38.35	\$ 39.69
Yearly Cost not to exceed	\$ 193,579.95	\$ 201,490.90	\$ 208,778.93

VISTA CSUCI Oxnard C Street

	2009- 2010	2010- 2011	2011- 2012
Weekdays	256	258	257
Saturdays	51	50	53
Hours per weekday	14.67	14.67	14.67
Hours per Saturday	10.08	10.08	10.08
Total Hours	4269.6	4288.86	4304.43
Operating Cost per hour	\$ 37.05	\$ 38.35	\$ 39.69
Yearly Cost not to exceed	\$ 158,188.68	\$ 164,477.78	\$ 170,842.83

In addition to compensation for operating the buses, COMMISSION agrees to pay contractor at a rate of \$62.00 per hour (2008-09 rate, which will be increased by C.P.I. for 2009-10 and each year thereafter) for work related to sign replacement and sign holder repairs as discussed in Attachment 1, SCOPE OF WORK. COMMISSION will provide the signs and sign holders. CONTRACTOR agrees to provide this service in a workmanlike manner. This rate of payment includes all labor-related costs for this service including mechanic to perform work, tools and mileage. The number of hours to be reimbursed for any one schedule change shall not exceed 40 hours without prior written approval of Executive Director of the COMMISSION. In addition, COMMISSION will reimburse CONTRACTOR the amount of CONTRACTOR'S cost for any materials used to make repairs.



**Item #12**

**November 5, 2010**

**MEMO TO: VENTURA COUNTY TRANSPORTATION COMMISSION**

**FROM: VICTOR KAMHI, BUS TRANSIT DIRECTOR**

**SUBJECT: EXTENSION OF VISTA TRANSIT SERVICE CONTRACTS**

**RECOMMENDATION:**

- Authorize option to extend VISTA transit service contracts with Coach USA and FATCO for additional two years.

**BACKGROUND:**

VCTC, as the operator of VISTA, has contracted with Coach USA and FATCO to provide transit services. The Request for Proposals (RFP) stipulated that VCTC may extend any of the services provided by the Contractors under these contracts through June 30, 2015, using the same basis for costs as agreed to in the contracts, with the same formula and processes to establish cost increases. Both Coach USA and FATCO agreed to the stipulation, which was included in both contracts. A copy of the section from the RFP is included as Attachment A (below).

The Commission is working on a Regional Transit Study, which was initiated both to help improve management of VISTA, and subsequent to the State's approval of SB 716, to address the broader countywide transit organizational future. The State Legislature has requested a report from the VCTC by December 31, 2011 which will provide any future direction and legislative changes VCTC recommends to address the future provision of transit services within the county.

The Regional Transit Study is not scheduled to be completed until late 2011. At the same time, VCTC's transit service contracts, unless extended, will expire in July 2011. Given the uncertainty about who will be the operator(s) in 2012 and beyond, and the substantial financial commitment required to provide the VISTA services (new buses to provide the current service will require an expenditure of over \$13 million, plus the cost of maintenance and operations facilities), it is unlikely that VCTC will find contractors willing to provide a competitive proposal for what could be a one or two year contract.

This action is to authorize staff to develop amendments to the transit service contracts based on levels of service and approved budgets. The specific Fiscal Year 2011-12 transit contract amendments will be presented to the Commission in the spring of 2011 for action.

**EXHIBIT 4**

**Attachment A**  
**VENTURA COUNTY TRANSPORTATION COMMISSION**  
**REQUEST FOR PROPOSALS (RFP)**  
**FOR OPERATION OF INTERCITY/COUNTY FIXED ROUTE BUS SERVICE DIAL-A-RIDE**  
**SERVICE FOR VENTURA COUNTY**  
**December 7, 2006**

**IV. PERIOD OF CONTRACT**

**A. Base Term**

The Hwy 101, Hwy 126, Conejo Connection, VISTA CSUCI-Camarillo Metrolink Station and the VISTA CSUCI-"C" Street Transfer Center, the Coastal Express, the Santa Paula/Fillmore Area Dial-A-Ride, and the Vista East services shall commence on Monday, July 1, 2007 and terminate upon completion of daily service on June 30, 2012. VCTC

**B. Option Term**

Under this contract, the Contractor grants to VCTC the following option, which may be exercised in writing at any time on or before sixty (60) calendar days prior to June 30, 2012, pending authorization from FTA. The VCTC may extend the any of the services provided by the Contractor under this contract through June 30, 2015, using the same basis for costs as agreed to in the contract, with the same formula and processes to establish cost increases. See Appendix A "Cost Proposal Form" for details.

Such extension will be at the rates, terms and conditions as the original term of the contract except that the VCTC may allow an increase in rates based on increased costs of labor, fuel, oil, or other petroleum products. Any increase in labor costs must be substantiated by a valid contract between the contractor and his employees and/or union organization representing contractor's employees. Any increase based on increases in labor, fuel, oil or other petroleum products must be substantiated by valid purchase orders or other such contracts verifying that such increase is actual, unavoidable and beyond the control of the contractor. Any such increase will be no more than the current cost of living increase as determined by the State of California for the Ventura County/Santa Barbara County areas.

The Contractor shall agree, upon request of the VCTC to submit detailed cost breakdowns, for the option period(s) in order to permit verification of this request. This request for an increase in proposed fees shall be made no less than forty-five days prior to expiration of the contract.

Prior to exercising the option, VCTC shall serve notice to the Contractor of its intention to extend. Such notice shall not be deemed to commit VCTC to such extension, nor shall it be binding upon the Contractor if postmarked less than sixty (60) days prior to the expiration of this contract.

It shall be mutually understood and agreed that all work performed and services provided under any exercised option shall be in strict compliance with all requirements of this contract.

Additionally, it shall be mutually understood and agreed that: (1) VCTC is under no obligation to exercise this option; (2) no representation has been made by VCTC committing it to exercise this option; and (3) VCTC may decline to accept the option and secure services elsewhere. Such option may be exercised by amendment hereto or by issuance of a new contract.

At the Contractor's option the Contractor may waive and forego any cost increases in the option years, by indicating such option on the Proposal Cost Form. This option will be considered by VCTC in evaluation of proposals prior to award of contract.

June 12, 2012

Darren Kettle  
Executive Director  
Ventura County Transportation Commission  
950 County Square Drive, Suite 207  
Ventura, CA 93003

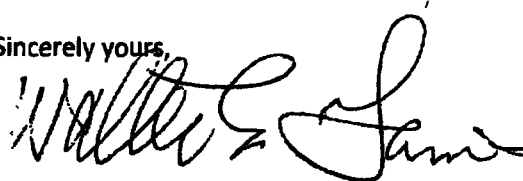
Re: Vista Operating Agreement 2007-2012 and Vista Lease Agreement 2007-2012 by and between  
Ventura County Transportation Commission ("VCTC") and CUSA CC, LLC (the "Agreements")

Dear Darren:

As you are aware, CUSA CC, LLC, ("CUSA") and its affiliates are currently operating in Chapter 11 Bankruptcy. As part of the Bankruptcy process, the assets of CUSA have been sold. The sale is expected to close in the next 60 days. The buyer has advised CUSA that it does not intend to operate the Agreements after closing. Accordingly, when the Agreements expire on June 30, 2012, they will not be renewed by CUSA.

CUSA is willing to consider entering into a short-term extension to continue service between June 30, 2012, and the date when the sale closes. If VCTC is interested in discussing a short-term extension, please contact us.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Walter E. Gaines", written over the typed name.

Walter E. Gaines  
Managing Director – Southern California

**EXHIBIT** 5